

CLERK'S COPY.

19700  
24-05

DEPT OF STATE  
SAN FRANCISCO

RECEIVED  
ORIGINAL

RECEIVED  
ORIGINAL

RECEIVED  
ORIGINAL



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

## No. 20

STATE OF CALIFORNIA AND BOARD OF STATE  
HARBOR COMMISSIONERS FOR SAN FRANCISCO  
HARBOR, APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA, UNITED  
STATES MARITIME COMMISSION, ENCINAL  
TERMINALS, ET AL.

## No. 22

CITY OF OAKLAND, A MUNICIPAL CORPORATION,  
ACTING BY AND THROUGH ITS BOARD OF PORT  
COMMISSIONERS, APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA, UNITED  
STATES MARITIME COMMISSION, ENCINAL  
TERMINALS, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF CALIFORNIA

## VOL. I

### INDEX

	Original	Print
Record from D. C. U. S., Northern District of California	1	1
Petition and bill for injunction in case of State of California et al. vs. United States of America and U. S. Maritime Commission, No. 22000	1	1
Exhibit "A"—Report and order of Commission, Sept. 11, 1941, Docket No. 555	17	13
Exhibit "B"—Petition of respondents for reconsidera- tion before Commission	47	45

Record from D. C. U. S., Northern District of California—  
Continued

	Original	Print
Petition, and bill for injunction in case of City of Oakland vs. United States of America and U. S. Maritime Commission, No. 22002	55(1)	51
Exhibit 1—Statement showing rates prescribed for wharf storage	55(16)	62
Order consolidating actions for trial, permitting intervention and granting interlocutory injunction	56	63
Answer in cause No. 22000	61	66
Exhibit "A"—Special appearance and motion to dismiss in Docket No. 555 before Commission	64	69
Answer in cause No. 22002	66(1)	71
Exhibit "A"—Report and order of Commission (copy) (omitted in printing)	66(5)	
Order permitting Encinal Terminals to intervene	67	73
Answer of intervenor Encinal Terminals	69	74
Order permitting Parr-Richmond Terminal Corp. to intervene	73	75
Answer of intervenor Parr-Richmond Terminal Corp.	75	76
Order permitting Howard Terminal to intervene	78	77
Answer of intervenor Howard Terminal	79	78
Order dismissing cause No. 22005	82	79
Minute entires of trial	83	79
Opinion, Healy, J.	87	82
Exceptions and objections and proposed amendments to defendants' proposed findings of fact and conclusions of law	104	93
Findings of fact and conclusions of law	118	103
Final decree—Cause No. 22000	125	108
Final decree—Cause No. 22002	126-A	109
Appeal papers in cause No. 22000:		
Petition for appeal	127	111
Assignments of errors	128	111
Order allowing appeal	132	114
Citation and service (omitted in printing)	134	
Bond on appeal (omitted in printing)	175	
Stipulation and order as to record	180	115
Appeal papers in Cause No. 22002:		
Petition for appeal	186	119
Assignments of errors	187	119
Order allowing appeal	189	121
Citation (omitted in printing)	191	
Bond on appeal (omitted in printing)	193	
Stipulation and order as to record	195	122
Clerk's certificate (omitted in printing)	201	

PETITIONERS' EXHIBITS

Exhibit No. 1—Proceedings before United States Maritime Commission, Docket No. 555	204	125
Order dated November 7, 1939, instituting the proceeding in Docket No. 555	205	125

# INDEX

iii

## Record from D. C. U. S. Northern District of California— Continued

### Exhibit No. 1—Proceedings before United States Mari- time Commission, Docket No. 555—Continued

	Original	Print
Notice of Hearing, dated November 14, 1939, (omitted in printing)	207	
Supplemental Order, dated November 30, 1939, making Board of State Harbor Commissioners, Port of San Francisco, a respondent	208	127
Notice of Postponement of Hearing, dated December 21, 1939 (omitted in printing)	209	
Notice of Postponement of Hearing, dated January 13, 1940 (omitted in printing)	210	
Supplemental Order, dated February 3, 1940, making State of California and others Respondents	211	128
Notice of Further Hearing, dated August 17, 1940, (omitted in printing)	212	
Notice of Further Hearing, dated August 22, 1940, (omitted in printing)	213	
Notice of Postponement of Further Hearing, dated September 10, 1940 (omitted in printing)	214	
Notice of Oral Argument, dated June 19, 1941, (omitted in printing)	215	
Report of the Commission and Order dated September 11, 1941, (copy) (omitted in printing)	216	
W Petition of Respondents State of California and Board of State Harbor Commissioners for San Francisco Harbor for Reconsideration, (copy) (omitted in printing)	217	
Petition of Board of Port Commissioners of the City of Oakland for Reconsideration	226	130
Order dated October 23, 1941, denying petitions and requests for reconsideration and rehearing	232	133
Exhibit No. 2—Transcript of hearing before United States Maritime Commission, Docket No. 555	1	134
Caption and appearances	1	134
Colloquy	5	135
Testimony for Commission:		
Gates, Mark H.	11	140
Gerini, W. R.	29	152
Gates, Mark H. (Recalled)	41	159
McCrone, Day	47	164
McCarl, Merritt D.	57	170
Connolly, C. S.	72	179
McCarl, Merritt D. (Recalled)	91	190
Anderson, J. H. (omitted in printing)	94	
Allin, B. C. (omitted in printing)	99	
Cantelow, H. C. (omitted in printing)	111	
Burley, R. F. (omitted in printing)	119	
Bushnell, George H.	143	192
Burley, R. F. (Recalled)	164	196
Burley, R. F. (Recalled) (omitted in printing)	177	

Record from D. C. U. S., Northern District of California—  
Continued

Exhibit No. 2—Transcript of hearing before United  
States Maritime Commission, Docket No. 555—Con-  
tinued

Testimony for Commission—Continued	Original	Print
Pell, Geo. P. ....	204	197
Bushnell, Geo. H. (Recalled) .....	230	204
Burley, R. F. (Recalled) .....	268	228
Watson, Donald ..... (omitted in printing) .....	287	
McCormick, Ernest L. .... (omitted in printing) .....	296	
Walker, Hiram V. .... (omitted in printing) .....	303	
Burns, Joseph J. .... (omitted in printing) .....	306	
Burns, Joseph J. (Recalled) (omitted in printing) .....	321	
Nootbaar, H. V. .... (omitted in printing) .....	321	
Breen, Mathew A. .... (omitted in printing) .....	333	
West, J. R. .... (omitted in printing) .....	399	
Norton, Robert S. .... (omitted in printing) .....	433	
Casselmann, W. M. .... (omitted in printing) .....	455	
Ventre, John P. .... (omitted in printing) .....	469	
Barthels, O. C. .... (omitted in printing) .....	485	
Breen, Mathew A. (Recalled) (omitted in print- ing) .....	495	
Laidlaw, N. S. .... (omitted in printing) .....	495	
Howard, Chas. P. .... (omitted in printing) .....	519	
Hutcherson, Robert .... (omitted in printing) .....	528	
Williams, A. V. .... (omitted in printing) .....	541	
Howard, Chas. P. (Recalled) (omitted in print- ing) .....	548	
Adam, Howard G. ....	549	235
Major, William E. .... (omitted in printing) .....	556	
Hiltner, J. K. .... (omitted in printing) .....	562	
Differding, T. G. ....	564	237
Allin, B. C. (Recalled) .....	644	274
Burgin, C. O. .... (omitted in printing) .....	808	
McCarl, M. D. (Recalled) .....	825	298
Testimony for respondents:		
Slade, Samuel D. .... (omitted in printing) .....	735	
Hinde, J. K. .... (omitted in printing) .....	770	
Testimony for Commission:		
Gates, Mark H. ....	1069	444
Geary, William A. ....	1148	492
Parr, Fred D. ....	1181	512
Ventre, John P. (Recalled) .....	1194	516
Graham, S. M. ....	1306	525
Bailey, Leon A. ....	1365	530
Differding, T. G. (Recalled) (omitted in printing) .....	1384	
Testimony for respondents:		
Somers, F. A. .... (omitted in printing) .....	1398	
Grace, Volney F. .... (omitted in printing) .....	1413	
Testimony for Commission:		
McCarl, Merritt D. ....	1451	544
Ricketts, R. Neil ....	1481	563
Smith, Carl M. ....	1507	579



# INDEX

Record from D. C. U. S. Northern District of California—  
Continued

Exhibit No. 2—Transcript of hearing before United  
States Maritime Commission, Docket No. 555—Con-  
tinued

## Testimony for Commission—Continued

Original Print

Gates, Mark H. (Resumed)	1525	587
Allin, B. C. (Resumed)	1548	599
Gates, Mark H. (Resumed)	1589	608
Smith, Carl M. (Resumed)	1603	616
Parr, Fred D. (Resumed)	1607	619

## Testimony for respondents:

Engel, C. H. .... (omitted in printing)	1644	
---	------	--

## Testimony for Commission:

Allin, B. C. (Resumed)	1729	634
Ventre, John P. (Resumed)	1760	653
Graham, Sumner (Resumed)	1813	685
Differding, T. G. (Resumed)	1852	709

Exhibit No. 3—Copies of exhibits introduced on the hearing  
before United States Maritime Commission, Docket No.  
555

No. 1—Form for assignment of space	1905	740A
No. 2—Statement of pier and wharf assignments in effect as of Jan. 24, 1940	1905	740B
No. 3—Form of receipt—State Terminal Co., Ltd.	1906	741
No. 4—Form of receipt—Golden Gate Terminals	1909	742A
No. 5—Agreement between Board of Port Commis- sioners and McCormick Steamship Co., March 1, 1932	1910	742B
No. 8—Agreement between City of Oakland and Howard Company, Nov. 5, 1914	1912	743
No. 60—Preliminary report providing a statement of the marine terminal problem in the San Francisco bay area—Case 4090 before Railroad Commission	1923	752
No. 61—Final report providing recommendations in the matter of the marine terminal problem in the San Francisco bay area—Case No. 4090 before Railroad Commission	1934	760
No. 62—Proceedings of twenty-sixth annual convention of Pacific Coast Association of Port Authorities	2114	871
No. 63—Formula for the determination of port and marine terminal costs for rate making purposes	2249	967
No. 64-A—Tariff charges of Board of Harbor Commis- sioners for San Francisco Harbor	2326	1044
No. 65—Letter, M. H. Gates to David E. Scoll, Dec. 13, 1939	2345	1063
No. 66—Rules, regulations and charges, State Refrigera- tion Terminal, issued by Board of State Harbor Commissioners, effective June 1, 1935	2381	1099
No. 67—Terminal tariff No. 1—State Terminal Co., Ltd.	2382	1100
No. 68—Terminal tariff No. 1—Golden Gate Terminals	2389	1107
No. 71-A—Tariff No. 1 applying at Municipal Termi- nals of Oakland, California	2400	1117
	2418	1125

Record from D. C. U. S., Northern District of California—  
Continued

Exhibit No. 3—Copies of exhibits introduced on the  
hearing before United States Maritime Commission.

Docket No. 555—Continued

	Original	Print
No. 98—Form of license and concession agreement for use of real property . . . . .	2482	1189
No. 99—Form for lease of real property . . . . .	2489	1198
No. 103—Letter, Alice S. Troxel to Commission, Jan. 23, 1940, with enclosed list . . . . .	2502	1213
No. 115—Statement showing free time allowed and demurrage charges . . . . .	2505	1216
No. 117—Comparison of wharf demurrage charges after expiration of free time period . . . . .	2508	1218
No. 126—Port of Oakland operating report, fiscal year 1939-1940 . . . . .	2512	1219
No. 126-A—Statement of Port of Oakland expenses for fiscal year 1939-1940 . . . . .	2523	1233
No. 126-B—Statement of construction costs of structures—Port of Oakland . . . . .	2526	1237
No. 127—Letter, R. N. Ricketts to Guy M. Carlon, Oct. 5, 1940 . . . . .	2531	1240
No. 128—Statement showing unit costs of pier and wharf construction—Port of Oakland . . . . .	2534	1241
No. 129—Expense accounts—Port of Oakland . . . . .	2535	1242
No. 130—Determination of wharf demurrage cost of Howard Terminal based on formula of Ford K. Edwards (Exhibit 63) . . . . .	2536	1243
No. 131—Statement of wharf demurrage, Howard Terminal, Nov. 1938 to Oct. 1939 . . . . .	2565	1279
No. 135—Letter, M. H. Gates to Commission, Oct. 5, 1940, enclosing financial statements as requested . . . . .	2547	1255
No. 135-A—Statement showing tonnage of commodities—Pier 56—main building . . . . .	2566	1280
No. 135-B—Statement showing tonnage of commodities—Pier 56—first floor annex . . . . .	2567	1280
No. 135-C—Statement showing tonnage of commodities—Pier 56—second floor annex . . . . .	2568	1280
No. 137—Determination of wharf demurrage cost of Port of Stockton based on formula of Ford K. Edwards . . . . .	2569	1281
No. 140—Same for Encinal Terminal . . . . .	2580	1292
No. 153—Sample warehouse receipt—Port of Oakland, Grove Street Pier . . . . .	2589	1301
No. 154—Same . . . . .	2591	1303
No. 155—Receiving memorandum—Outer Harbor Terminal . . . . .	2593	1305
No. 163—Statement of Oakland harbor improvement bonds issued and outstanding . . . . .	2594	1307
No. 164—Analysis of amount received from P. W. A. . . . .	2595	1308

# INDEX

vii

Record from D. C. U. S., Northern District of California—  
Continued

Exhibit No. 3—Copies of exhibits introduced on the  
hearing before United States Maritime Commission,  
Docket No. 555—Continued

	Original	Print
No. 165—Statement showing tonnage in storage at Oakland Municipal Terminals, etc., fiscal year 1939-1940.....	2596	1308
No. 172—Howard Terminal balance sheet, Dec. 31, 1939.....	2597	1308
Statement of points to be relied upon and stipulation as to record—Case No. 20.....	2599	1310
Statement of points to be relied upon and stipulation as to record—Case No. 22.....	2621	1320
Orders noting probable jurisdiction.....	2635	1327

[fol. 1]

**IN THE SOUTHERN DIVISION OF THE UNITED  
STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF CALIFORNIA**

No. 22000-R

STATE OF CALIFORNIA and BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, Petitioners,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

PETITION AND BILL FOR INJUNCTION—Filed Oct. 21, 1941

Now comes State of California and Board of State Harbor Commissioners for San Francisco Harbor, the above named petitioners, who seek in this proceeding to enjoin, set aside, annul and suspend, so far as it relates to these petitioners, a certain affirmative order of the defendant United States Maritime Commission made and entered on the 11th day of September, 1941, in a proceeding before said United States Maritime Commission and designated "In the Matter of Services, Rates, Charges, Tolls, Rentals, Rules, Regulations, Classifications, Agreements, Acts, Practices, and Operations of the San Francisco Bay Area Terminals Named Herein" and numbered 555 on the Docket of said Commission, and for a cause of action the petitioners respectfully allege:

[fol. 2]

I

The State of California, one of the above named petitioners herein, is one of the States of the United States of America, and the Board of State Harbor Commissioners for San Francisco Harbor, one of the above named petitioners herein, hereinafter referred to as the Board, is and at all times herein mentioned was a duly constituted agency of the state government of said State of California, and this suit is brought on behalf of both of said petitioners pursuant to the written request of the Board. Earl Warren is the duly elected, qualified and acting Attorney General of the State of California. The principal operating office of



petitioner State of California, so far as the matters and things investigated in the above mentioned proceeding before the Commission are concerned, is at San Francisco, California, and the principal place of business and office and operating office of petitioner the Board is at San Francisco, California.

## II

The United States of America is made defendant in this suit pursuant to Section 31 of the Shipping Act, 1918, as amended (39 Stat. 738, c. 341, Sec. 31; 46 U. S. Code, Sec. 830), 28 U. S. Code, Sec. 41, subd. (28), and Title 28, U. S. Code, Secs. 43-48, inclusive.

The defendant United States Maritime Commission, hereinafter referred to as the Commission, is an administrative body created by the Shipping Act of 1916 and the acts amendatory and supplementary thereto.

The affirmative order of the United States Maritime Commission hereafter mentioned was made in a proceeding instituted by the Commission, the matter involved in such proceeding arising within the Northern District of California, Southern Division.

## III

This petition invokes the jurisdiction of this honorable [fol. 3] Court under, and such jurisdiction is based upon, the provisions of 28 U. S. Code, Sec. 41, subd. (28), and of the Shipping Act, 1916, as amended (46 U. S. Code, Sec. 830), which provide for actions to enjoin, set aside, annul or suspend, in whole or in part, the orders of the defendant Commission; and this petition further alleges that the jurisdiction of this Court depends upon the fact that this action arises under the Constitution and laws of the United States of America. The petitioners allege that the proceeding here instituted is brought to suspend and set aside an order of the Commission, and the proceeding is brought in the judicial district wherein are the residences of the parties concerning whose acts the investigation and hearing and said order of the Commission were made, and the district where the matters complained of in the proceeding before the Commission arise is within the jurisdiction of this honorable Court.

## IV

On the 7th day of November, 1939, defendant Commission, at a session held at its office in Washington, D. C.,

upon its own motion made its order in the proceeding hereinabove mentioned; that said order initiated an investigation to determine whether the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of all or any of the terminals referred to therein are in violation of Sections 15, 16, 17 and 20 of the Shipping Act of 1916, as amended. Said order named certain terminals as respondents in said proceeding. Subsequently the Commission ordered that the Board of State Harbor Commissioners, Port of San Francisco (whose true name is Board of State Harbor Commissioners for San Francisco Harbor), and the State of California be made respondents in said proceeding.

Hearings in said proceeding were held in San Francisco [fol. 4] on February 13, 14, 15, 16, 19, 20, 21, and, after continuance, on October 7, 8 and 9, 1940, on which last date the hearing was concluded and the matters before the Commission submitted on briefs to be subsequently filed. Thereafter the attorney for the Commission served upon all the respondents in said proceeding his request for findings of fact and conclusions, to which exceptions and proposed amendments were made and filed by each of these petitioners, including an exception to the proposed finding that the Board was and is included within "other persons subject to this act", as defined in Section 1 of the Shipping Act of 1916, as amended, and also to said counsel's proposed findings of fact and conclusions Nos. 5, 6 and 8.

At the beginning of the hearing petitioners herein, both appearing specially for that purpose and that purpose alone, made a motion to dismiss the proceedings as against each of them. The motion was denied by the Chief Regulations Examiner, whereupon these petitioners, reserving said objection to the jurisdiction of the Commission and not in any manner waiving the same, appeared generally in the proceeding.

At the conclusion of the hearing said respondents again moved to dismiss the proceeding as to each of them on the ground that the Commission had no jurisdiction of them or either of them in said proceeding, and said motion was also denied. Said motion was in words as follows, to-wit:

"1. That the United States Maritime Commission has no jurisdiction of either of said respondents or of the

subject matter of said proceedings so far as it relates to said respondents or either of them.

"2. That the United States Maritime Commission is without authority to investigate any of the practices or acts of the State of California or the Board of State Harbor Commissioners for San Francisco Harbor.

"3. That there is no constitutional authority for Congress to extend or exercise its regulatory power in any [fol. 5] manner over either of said respondents.

"4. That the Shipping Act of 1916, as amended, is not intended to apply and does not apply to or include these respondents, the State of California or the Board of State Harbor Commissioners for San Francisco Harbor, and that the United States Maritime Commission is not authorized or empowered by statute or otherwise to investigate or regulate either of said respondents with reference or in relation to any of the matters or things referred to in the Shipping Act of 1916, as amended, and particularly as referred to in sections 1, 15, 16, 17 and 20 of said act or otherwise."

Briefs were subsequently filed. The honorable G. O. Basham, Chief Regulations Examiner, subsequently made and filed in said proceeding his proposed report and recommended findings, which were served upon all respondents in said proceeding, including these petitioners. These findings included a finding numbered 1 that respondent in said proceeding, the Board, is included within "other persons subject to this act as defined in Section 1 of the Shipping Act of 1916, as amended". This recommended finding and also findings Nos. 6, 8 and 9, relating respectively to failure of these respondents to give thirty days' notice of tariff changes, to the prescribing of minimum demurrage and wharf storage charges, and requiring all of the respondents in said proceeding to file tariffs with the Commission, were duly excepted to by both of these petitioners.

The matter, being submitted on briefs, was orally argued before the Commission on July 9, 1941. Subsequently the Commission made and filed its order, a copy of which is attached hereto and marked Exhibit "A" and made a part hereof as fully as if herein set out verbatim.

## V

At the hearing in the above mentioned proceeding before the Commission there was evidence introduced, without any evidence in contradiction thereof, as to the following facts: That petitioner the Board is a public body whose members [fol. 6] are appointed by the Governor of the State of California and confirmed by the State Senate, said Board having been created under the statutes of the State of California in 1863; that the Board controls the activities of petitioner State of California on the San Francisco waterfront, providing facilities for handling of freight and passengers thereon, operating the State Belt Railroad and some forty-five wharves and piers; that all these wharves and piers have been built by petitioner the State of California out of San Francisco Harbor improvement funds or Harbor Bond funds supplied from bonds voted by the People of the State and for which the State credit is pledged; that all of those piers are built over submerged tidal waters of San Francisco bay or on reclaimed land, and all are located on state property owned by the State of California; that previous to the filling in of these tidelands they were covered by tidal waters; that these lands have been reclaimed and filled in by the State of California, which State owned them at the time of reclamation and has owned them since the admission of the State into the Union; that in administering these wharves and piers, constituting the Port of San Francisco, petitioner State of California, through the Board, is limited in its charges by Section 3084, Harbors and Navigation Code, hereinafter referred to as the H. and N. Code; that the Board has and exercise powers vested in it by H. and N. Code Sections 3005, 3204, 3226, 3130-3138, 1909, 3052, 3150, 1944, 1945 and 1908, 3105 and 3201, 1782, 1900, 1907, 1708, 1732, 1706, 1990, 3200 and 3201, relating respectively to building a seawall and dredge, providing harbor police and making quarantine regulations, extending streets and establishing thoroughfares, exercising power of eminent domain, locating and constructing public dry docks, locating docks for federal use, operating a belt line railroad, providing a location for airports, making rules and regulations to control the same, contracting for and using fireboats, regulating obstructions to commerce and navigation in San Francisco bay, mapping water front changes, making rules and regulations for



the commerce of the port, appointing officers and employees of the State, possessing and controlling the area of the Port of San Francisco owned by the State, depositing monthly the revenues of the Board in the State Treasury and using such funds for paying expenses of the Board, making contracts in the manner prescribed by law, and prosecuting persons failing to comply with rules and regulations of the Board in the placing of obstructions in the bay without its consent; that said wharves and piers on the San Francisco water front and said harbor are administered pursuant to and in the manner provided by Section 1706, H. and N. Code, requiring all moneys collected by the Board to be paid into the State Treasury to the credit of the San Francisco Harbor Improvement Fund, and that said fund shall be expended to pay the expenses of the Board and in the manner provided by Section 3080, providing that the Board shall regulate port charges and collect an amount therefrom sufficient to enable it to perform its legally required duties, and in the manner provided by Section 3084, providing that no more money shall be collected by the Board than is sufficient to enable it to perform its duties and exercise its powers provided for in said Code.

That all the evidence taken at said hearing upon the matters of the method of the Board's creation, its existence, activities, powers and duties justified and justifies the inference that it exercised and exercises, and as a matter of fact it did and does exercise, only purely governmental powers, and that petitioner State of California, in the construction, maintenance and administration of the Harbor of San Francisco, was at all times mentioned in said proceeding before the Commission engaged and is now engaged, by and through the petitioner Board, in the performance of purely governmental functions, and was not [fol. 8] and is not engaged in any kind of business whatsoever; that there was no evidence at said hearing to the contrary, and no evidence that either of petitioners was engaged in any business whatsoever or in performing any function other than a governmental function.

## VI

That there was no evidence at said hearing that either of these petitioners was at any of the times mentioned or in-

quired into at said hearing or is now carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water, or otherwise, or that either of said petitioners was at any of said times or now is carrying on any business whatsoever.

## VII

That the Congress of the United States has and had no power to authorize the United States Maritime Commission to regulate either of the petitioners herein in the exercise of the powers vested in the Board as hereinabove alleged, or in making or adopting or enforcing regulations as to the amount of free time to be allowed for the assembling of cargo upon, or its removal from, the wharves and piers of petitioner State of California, or in the matter of giving notice of tariff changes, or of fixing and collecting wharf demurrage or storage charges on cargo left upon said wharves and piers beyond the free time allowed, or in regulating any of the practices or activities whatsoever of either of these petitioners in relation to the said wharves and piers of petitioner State of California on the San Francisco waterfront or in San Francisco Harbor.

## VIII

That the Shipping Act of 1916, as amended, does not by its terms purport to apply and does not apply to petitioner State of California or petitioner Board of State Harbor Commissioners for San Francisco Harbor.

[fol. 9]

## IX

That by reason of the law and the facts established at said hearing before the Commission, the Commission has and had no jurisdiction of either of the petitioners in said proceeding before it, or of any of the matters or things investigated in said proceeding so far as they related or relate to either of these petitioners, and said order made by the Commission in said proceeding on September 11, 1941, so far as it related or relates or was intended to relate to either of these petitioners or to any of their activities, was and is erroneous and void and of no effect, and beyond the power of the United States Maritime Commission.

## X

That said order is erroneous and void for all of the following reasons:

(1) In that it did not grant the motion of these petitioners to dismiss said proceeding as to each of them;

(2) In that it found and determined that the United States Maritime Commission had and has jurisdiction of each of these petitioners in said proceeding;

(3) In that it found and determined that Congress has constitutional power to regulate petitioner State of California, a state of the United States of America, acting by and through petitioner, the Board of State Harbor Commissioners for San Francisco Harbor, an agency of said state, in the ownership and/or operation of a wharf;

(4) In that it did not find and determine that Congress has no power to regulate any owner and/or operator of a wharf or any wharfinger;

(5) In that it determined that Congress, in enacting the Shipping Act of 1916, as amended, intended to give and did give the United States Maritime Commission power to regulate petitioner State of California, a state of the United [fol. 10] States, in the ownership and/or operation of a wharf, by and through the Board of State Harbor Commissioners for San Francisco Harbor, an agency of said state;

(6) In that it determined that each of these petitioners is an "other person subject to this act" as that term is used in Section 1 of the Shipping Act of 1916, as amended;

And that said order is erroneous and void for all the additional reasons hereinafter specified.

## XI

That finding numbered 7, page 27 of the Report and Order of the Commission in said proceeding purports to be based upon studies of the cost of furnishing wharf storage in the San Francisco Bay Terminals, yet the evidence at the hearing that no study of such costs was made on the piers and wharves of these petitioners is uncontradicted, and the finding and determination of the Commission and its said affirmative order prescribing certain minimum

rates of wharf demurrage is mainly based upon a study and investigation not made by the Commission, and which is more than four years old, and is valueless as a basis for prescribing rates purporting to be compensatory;

That the evidence at the hearing is uncontradicted that it is necessary to charge so-called "penalty" rates of wharf storage and demurrage on the wharves and piers of these petitioners in order to keep the "in transit" portions of said wharves and piers clear of goods and thus permit free flow of traffic;

That for these reasons and for the further reason that said order as to rates of wharf storage and demurrage is based entirely upon the assumption that such rates to be reasonable and not unduly prejudicial and preferential, particularly as to these petitioners, should be compensatory, and not at "penalty" rates is wholly unsupported by and contrary to the evidence taken at the hearing; and is un-[fol. 11] reasonable, discriminatory, and prejudicial to these petitioners; that said portion of said affirmative order was made without jurisdiction, was made wholly without warrant of law, and is erroneous and void as to these petitioners.

## XII

That said affirmative order of the Commission is erroneous in that without jurisdiction to make any finding, determination or order in said proceeding as to either of these petitioners, the Commission made all of the findings, determinations, and orders, hereinabove mentioned in this petition without jurisdiction, and, further, purported to order these petitioners to file with the Commission and keep open to public inspection, *to file with the Commission and keep open to public inspection*, schedules showing all rates and charges for the furnishing of wharfage, dock, warehouse and other terminal facilities in connection with a common carrier by water.

## XIII

That the said affirmative order is void and of no effect for the further reason that it violates Section 9 of Article I of the United States Constitution in that it is a regulation of commerce which gives preference to the ports of the



states of Washington and Oregon over the petitioners herein in two respects, namely, by prescribing higher wharf storage rates for these petitioners while permitting such other ports to maintain lower rates than those prescribed, and by prescribing a shorter free time period for these petitioners than is permitted to remain in effect in such other ports. That such other ports in the states of Washington and Oregon are in competition with these petitioners in connection with the transpacific and intercoastal trades.

#### XIV

That petitioners have heretofore on the 17th day of October, 1941, filed with the United States Maritime Commission their petition for reconsideration of its said affirmative [fol. 12] order of September 11, 1941, but petitioners have received from said Commission no notice of its action upon said petition; that a copy of said petition is attached hereto and marked Exhibit "B" and made a part hereof as fully as if herein set out verbatim.

#### XV

That said affirmative order of the said United States Maritime Commission is erroneous and void as to these petitioners in that it takes from petitioners their property for a public use without just compensation, and indirectly deprives the petitioners of their property without due or any process of law in violation of the Fifth Amendment to the Constitution of the United States, and in this behalf the petitioners allege that compliance with the said affirmative order of the Commission will compel petitioners to suffer irreparable loss, as herein alleged, during the continuance of the effectiveness of said order.

#### XVI

That said affirmative order of the Commission is predicated upon a misapplication of the law to the facts, and the said order is erroneous and void and beyond the power of the United States Maritime Commission and is in violation of the United States Statutes in such cases made and provided.

#### XVII

That said affirmative order of the Commission is based upon a mistake of law and the United States Maritime Com-

mission has erroneously construed its authority under the aforesaid Shipping Act of 1916, and the Acts amendatory and supplementary thereto, in that there is no warrant or authority in said Shipping Act authorizing the United States Maritime Commission to make such order as to these petitioners.

That by reason of the foregoing premises the affirmative order of the Commission dated September 11, 1941, is in excess of the authority conferred upon it by law and is therefore void as to these petitioners.

### XVIII

The affirmative order of the Commission made on the 11th day of September, 1941, requires these petitioners to comply therewith on or before October 27, 1941, and thus compels petitioners to cease and desist on said day and thereafter to abstain from allowing greater periods of free time than the periods set forth in Table 1 of the report exclusive of Sundays and holidays, except as stated in said order, and requires these petitioners on or before said date to cease and desist from publishing, demanding or collecting wharf demurrage or wharf storage rates which shall be less than the minimum rates found reasonable in Finding 7 of said Commission's Report and findings, and said order further requires these petitioners and each of them to file with the Commission and keep open to public inspection schedules showing all rates and charges for the furnishing of wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

Unless the enforcement, operation and execution of the said affirmative order of the United States Maritime Commission is restrained and suspended during the course of this proceeding, irreparable injury will ensue to each of these petitioners in that they and each of them will sustain serious financial loss from being compelled to move storage cargo from the wharf where it has been declared for storage to an off storage area or warehouse without being compensated therefor, and further in that failure by the petitioners to comply with the said order will subject petitioners and each of them to severe penalties as prescribed in the Shipping Act of 1916, as amended, pursuant to which each day constitutes a separate violation and is subject to a separate and an exceedingly heavy penalty:

[fol. 14] That by reason of the premises, herein set forth, the petitioners have and each of them has no plain, speedy or adequate remedy at law.

Wherefore petitioners pray:

(a) That process in due form issue out of and under the seal of the Honorable Court, directed to defendants as required by law and that due and proper service of such process and of this petition be forthwith made by filing a copy thereof in the office of the Department of Justice of the United States and another copy in the office of the United States Maritime Commission pursuant to the provisions of Section 209 Judicial Code (Title 28 U. S. Code, Sec. 45) and thereafter the defendants and each of them be required on or before a date to be specified in the notice of process issued by this Court to appear herein and to answer this petition, but not under oath, answer under oath being hereby expressly waived.

(b) That as soon as practicable this Court convene a special statutory Court of three (3) judges as required by Title 28, U. S. Code, Sec. 47, and that a preliminary injunction be entered herein restraining, enjoining and suspending, until the further order of this Court the effect and enforcement of said affirmative order of September 11, 1941, until the further order of this Court.

(c) That inasmuch as the matter is urgent by reason of the fact that said affirmative order of the United States Maritime Commission requires the petitioners to comply therewith on or before October 27, 1941, the petitioners pray that pending the hearing upon the application for a preliminary or interlocutory injunction, a temporary restraining order be issued by this Honorable Court restraining, enjoining, and suspending the operation of the aforesaid affirmative order until the said application for a preliminary or interlocutory injunction shall have been heard and de- [fol. 15] terminated.

(d) That after final hearing, this Court adjudge, order and decree that the said affirmative order of the United States Maritime Commission is, and has at all times been beyond the lawful authority of the said Commission and wholly unlawful and void, and that the said affirmative order be perpetually set aside, suspended, cancelled and

annulled and the enforcement thereof perpetually enjoined, in so far as it affects or relates to these petitioners.

(e). That your petitioners shall have such other and further relief in the premises as in equity and justice may appertain, and as may be deemed by this Honorable Court to be adequate and proper under the circumstances.

State of California, and Board of State Harbor Commissioners for San Francisco Harbor. By J. F. Marias, President of said Board, Petitioners.

Earl Warren, Attorney General of the State of California. Lucas E. Kilkenny, Deputy Attorney General, Attorneys for Petitioners.

---

[fol. 16] *Duly sworn to by J. F. Marias, jurat omitted in printing.*

---

[fol. 17] EXHIBIT "A"

No. 555

Practices, Etc. of San Francisco Bay Area Terminals

Submitted July 9, 1941. Decided September 11, 1941.

Respondents, including State and municipal terminals, are "other persons" as defined in Shipping Act, 1916, as amended.

Certain respondents are operating under agreements or working arrangements within the purview of section 15 of said act, without approval of the Commission.

Practice of Encinal Terminals of collecting service charges from steamship lines on freight discharged at other terminals unauthorized by its tariff and unreasonable in violation of section 17 of said act.

Encinal Terminals knowingly received information in violation of section 20 of said act.

Practice of State and municipal terminals of making tariff changes without adequate notice unreasonable. Changes

should not be made except upon 30 days' notice, unless good cause exists for shorter period.

Respondents' rules, regulations and practices regarding free time unduly prejudicial and preferential and unreasonable in violation of sections 16 and 17 respectively, of said act. Reasonable regulation prescribed.

Respondents' rates, rules, regulations, and practices relating to wharf demurrage and wharf storage unduly prejudicial and preferential and unreasonable in violation of sections 16 and 17 respectively, of said act. Reasonable regulation prescribed.

Respondents should file their tariffs with the Commission in order that regulations prescribed may be enforced.

Appropriate order entered.

*David E. Scoll, Samuel D. Slade, T. G. Differding and Carl F. Arnold* for the Commission.

*Lucas E. Kilkenny, Earl Warren and E. A. McMillan* for State of California and Board of State Harbor Commissioners for San Francisco Harbor.

*W. Reginald Jones, Charles A. Beardsley and M. D. McCarl* for Board of Port Commissioners of the City of Oakland.

*J. R. Townsend, B. C. Allin and C. O. Burgin* for Stockton Port District.

*W. G. Stone* for Port of Sacramento and Sacramento Chamber of Commerce.

*Leslie M. Rudy* for Port of Redwood City.

*W. R. Gerini* for State Terminal Company, Ltd.

[fol. 18] *W. F. Williamson and R. P. Norton* for Eldorado Terminal Company and Eldorado Oil Works.

*Eugene D. Bennett, Hugh T. Fullerton, Joseph J. Geary, and E. M. Nuckols, Jr.* for Encinal Terminals.

*Chalmers G. Graham* for Howard Terminal.

*F. A. Somers* for Grangers Terminal Company.

*P. J. Shaw* for South San Francisco Terminal Company.



*Eugene A. Reail* and *Fred D. Parr* for Parr-Richmond Terminal Corporation.

*C. S. Connolly* for Albers Brothers Milling Company and Interstate Terminals, Ltd.

*W. S. Bell* for Islais Creek Grain Terminal Corporation.

*J. H. Anderson* and *F. W. Mielke* for The River Lines.

*H. V. Nootbaar* for West Coast Wharf and Storage Company.

*Joseph J. Burns* for Standard Coal Company.

*C. A. Hodgman* for Port of San Diego.

*Edwin G. Wilcox* for Oakland Chamber of Commerce.

*Elmer Westlake* for Western Sugar Company, Spreckels Sugar Refinery and California and Hawaiian Sugar Refining Corporation.

*Reginald F. Walker* for Western Sugar Refinery and Spreckels Sugar Company.

*H. A. Lincoln* for Fibreboard Products, Inc.

*Walter A. Rohde* for San Francisco Chamber of Commerce.

*Warren D. Lamport*, *John L. Kelly*, *Eler J. Amar* and *Charles A. Bland* for Board of Harbor Commissioners of Long Beach.

*Clyde M. Leach* for Board of Harbor Commissioners of the City of Los Angeles.

*L. M. Fites* for the Glidden Company.

*J. K. Hiltner* for United States Pipe and Foundry Company and Cast Iron Pressure Pipe Institute.

*N. S. Laidlaw* for Swayne and Hoyt, Ltd.

*J. R. West* for Northwest Marine Terminal Association.

*L. A. Bailey* and *Reginald L. Vaughan* for Warehousemen's Association of the Port of San Francisco.

*E. M. Cole* for American Cast Iron Pipe Company and Cast Iron Pressure Pipe Institute.

## Report of the Commission.

By the Commission:

Exceptions were filed to the report proposed by the examiner and oral argument was had. Substantially all of the examiner's recommendations are adopted herein.

This investigation was instituted upon our own motion to determine whether certain acts and practices of respondents<sup>1</sup>, which operate terminals in the San Francisco Bay area, are in violation of the Shipping Act, 1916, as [fol. 19] amended. Various shippers intervened, but offered no evidence. After hearing, briefs and replies thereto were filed.

The order of investigation alleges that some or all of respondents: (1) are carrying out agreements in violation of section 15; (2) are diverting cargo from its natural course and creating undue preferences or subjecting persons or traffic to undue prejudice by means of controlled tonnage and purchasing power in violation of section 16; (3) are receiving or soliciting confidential information from carriers which might be used to the detriment of shippers in violation of section 20; and (4) have failed to establish reasonable regulations and practices in connection with the receiving, storing, or delivery of property in violation of section 17.

The Board of State Harbor Commissioners for San Francisco Harbor, hereinafter called San Francisco, controls piers and wharves on the San Francisco waterfront which represent an investment of over \$40,000,000. Approximately 40 piers are assigned to, and are operated by steamship lines. San Francisco retains all revenue from

---

<sup>1</sup> Albers Brothers Milling Company; Board of Port Commissioners of the City of Oakland; Board of State Harbor Commissioners for San Francisco Harbor; Eldorado Oil Works; Eldorado Terminal; Encinal Terminals; Golden Gate Terminals; Grangers Terminal Company; Howard Terminal; Interstate Terminal, Ltd.; Islais Creek Grain Terminal Corporation; Parr-Richmond Terminal Corporation; Port of Redwood City; Port of Sacramento; Stockton Port District; Standard Coal Company of California; South San Francisco Terminal Company; State of California; State Terminal Company, Ltd.; The River Lines; West Coast Wharf and Storage Company.

dockage, tolls, rentals, storage and wharf demurrage. It is not permitted by State law to engage in warehousing or to operate under tariffs which create either a profit or loss. No taxes are paid. San Francisco's pier No. 45 and part of No. 56 are assigned to Golden Gate Terminals and State Terminal Company, respectively. They retain only revenues from handling, loading and accessorial services which they perform. The Board of Port Commissioners of the City of Oakland, hereinafter called Oakland, operates terminal facilities at Oakland. Its investment in property, derived largely from local and partly from Federal funds, is approximately \$20,000,000. No taxes are paid and the City is authorized to meet operating deficits by taxation. The Stockton Port District operates terminal properties at Stockton, together with warehouse, belt railroad and other facilities, which represent a total investment of local, State, and Federal funds in excess of \$9,000,000. No taxes are paid and interest charges and bond redemptions are met by tax levies upon the Port District.

Parr-Richmond Terminal Corporation operates terminal facilities at Richmond. A major portion of the property [fol. 20] is owned by the City and leased to the corporation. All of the facilities are exempt from city taxation. Howard Terminal and Encinal Terminals operate terminal facilities on the Oakland inner harbor. Encinal's facilities are leased from its parent company, Alaska Packers Association, which is controlled by California Packing Company, hereinafter called "Calpak." Operations of the other respondents are only incidentally involved in this proceeding.

The privately owned terminals, namely Parr-Richmond, Howard and Encinal and Golden Gate and State Terminals, file their tariffs with, and are regulated by the Railroad Commission of the State of California. The publicly owned terminals, which operate the major portion of the terminal facilities in the San Francisco Bay area, file no tariffs and are unregulated, except by their own governing bodies.

In 1935, the California Commission undertook a comprehensive study of the operations and revenues of private terminals in the Bay area. These studies are embodied in the Preliminary and Final Reports of Dr. Ford K. Edwards and Mr. T. G. Differding, which are of record in this proceeding. An analysis was made of all of the rates, rules and practices of the terminals from three aspects, (1) the

inadequacy of existing revenues, (2) uneconomical diversion of tonnage from one port to another, and (3) discrimination between various users of the terminal services. Certain of their recommendations, approved by the California Commission in *Decision No. 29171; Case No. 4090, Railroad Commission of the State of California* (1936), and supported by testimony of Mr. Differding in this proceeding have been recommended for adoption by counsel for the Maritime Commission. The order of the California Commission, prescribing an adjustment of the rates, rules and practices of the private terminals, was conditioned upon similar adjustments being made by the State and municipal terminals. All of the respondents herein have adopted substantially the recommendations of the California Commission covering toll, dockage and service charges,<sup>2</sup> but not those relating to free time, demurrage and storage [fol. 21] age. The primary issues in this proceeding concern the latter services.

San Francisco and Oakland, though extending their assistance and cooperation in this investigation, oppose the jurisdiction of the Commission on the ground that they are not "other persons" within the definition<sup>3</sup> contained in the Shipping Act, 1916, as amended. The law on the question has been ably briefed by those for and against our assumption of jurisdiction in the premises. However, no sufficient reason is shown for a departure from *Wharfage Charges and Practices at Boston, Mass.*, 2 U. S. M. C. 245, wherein, after considering contentions similar to those advanced by San Francisco and Oakland, we ruled that the Commonwealth of Massachusetts, in so far as it engages in the

<sup>2</sup> Toll charges are assessed against cargo for the privilege of transportation over or through terminal, or being loaded or discharged at terminal. Dockage charge is assessed against vessel for docking at wharf. Service charge is assessed against vessel for arranging for berth, space for cargo, checking cargo to or from vessel, receiving or delivering cargo, preparing manifests and "over", "short", "damage" reports, etc.

<sup>3</sup> The term "other person subject to this act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water (Section 1).

activities of an "other person," as defined in the Shipping Act, 1916, as amended, is subject to that act.

### *Issues*

Aside from the jurisdictional question, the issues concern the lawfulness of: (1) certain agreements under section 15, (2) Encinal's practice of collecting charges from steamship lines on freight discharged at another terminal, (3) Encinal's practice of soliciting freight through reciprocal purchases, (4) Encinal's practice of receiving notices containing names of consignees desiring delivery of cargo elsewhere without their consent, (5) the practice of San Francisco, Oakland and Stockton, of failing to provide adequate notice of tariff change, (6) the free time rules of respondents, except San Francisco, (7) the wharf demurrage and wharf storage charges assessed by Oakland, Howard, Stockton, Encinal, Parr-Richmond, Golden Gate and State terminals, and (8) the leasing and rental arrangements of Stockton and Oakland.

### *Agreements*

Oakland and McCormick Steamship Company operate under an agreement dated March 1, 1932 covering a preferential assignment to the latter of one-half of the shed area [fol. 22] at the former's Ninth Avenue terminal. The agreement provides that McCormick shall not compete with Oakland for terminal traffic and shall observe the same rates. Oakland also has an agreement with Howard, dated November 5, 1914, leasing certain facilities to the latter with the understanding that Oakland shall receive all revenue from tolls, wharfage and dockage. Rates to be observed are those fixed by Oakland. Stockton, under agreement dated July 23, 1936, extends preferential use of certain floor space to its lessee, Port of Stockton Grain Terminal, for the handling of grain and similar products. The latter company, though not a respondent herein, is a public wharfinger and files its rates with the California Commission. Stockton retains control of the space as well as the rates, rules and regulations to be observed. None of these agreements has been filed with the Commission.

Clearly, these are agreements as defined in Section 15, providing for "special rates, accommodations, or other



special privileges or advantages: controlling, regulating, preventing, or destroying competition; \* \* \* or in any manner providing for an exclusive, preferential, or co-operative working arrangement." As such, they are subject to our approval and it is unlawful to carry them out before such approval.

### *Encinal's practices*

Encinal is charged with unlawfully exacting service charges from McCormick and Williams, Dimond & Company, agents for Quaker Line for unperformed service. On freight billed to, but not delivered at, Encinal the carriers pay toll and service charges to Encinal as if the cargo had been delivered there. Carriers are said to be forced into this unusual practice by Encinal's use of the purchasing power and controlled tonnage of its parent companies.

McCormick tries to confine its East Bay operations to its terminal at Oakland, but admits that its terminal policies are influenced by a desire to obtain cargo controlled by Calpak. In 1935, McCormick discontinued coastwise calls at Encinal and thereby lost both coastwise and southbound Calpak traffic. Later, an agreement was made between Encinal, Calpak and McCormick whereby McCormick was [fol. 23] to resume the calls. In return it was to get southbound cargo controlled by Calpak and agreed, as to freight obtained through its own solicitation, not to oppose discharge thereof at Encinal. The cargo was delivered direct to McCormick's terminal whenever possible, with the permission of the consignees. For this "privilege" McCormick compensated Encinal through the above-described practice.

None of the other lines except Quaker indulged in this practice. Calpak is one of the Quaker's best customers. McCormick has no similar arrangement with any other terminal. Encinal states that under McCormick's tariff the latter was obligated to discharge at Encinal, and that by delivering to consignee at Oakland by Encinal's consent, McCormick saved the cost of draying or shifting to Encinal, and obtained carloading revenues on some of the shipments.

The collection of the charge, for which no service is performed, is not only in violation of Encinal's tariff, but is an unreasonable practice.

Encinal is charged, through improper solicitation, with diverting to its piers cargo originally consigned to compet-



ing piers. This is accomplished through a system of reciprocity between the consignee, Encinal, and a third party who is a buyer from the consignee and a seller to Encinal. For instance, a cargo of sulphur consigned to General Chemical Company for Howard delivery was diverted while in transit to Encinal (Standard Coal Company) through the intercession, at Encinal's request, of Tidewater Associated Oil Company. Associated sells large quantities of oil to Encinal and Calpak and is an important customer of General Chemical's. The consignee advised its New York principal that the change was made at Associated's request "for reciprocal reasons."

As stated in *Reciprocity in Purchasing and Routing*, 188 I. C. C. 417, 433-4, "the practice \* \* \* succeeds only in making the handling of existing traffic more expensive." However, the evidence does not show that Encinal used its purchasing power or that of its affiliates in a coercive manner. We conclude therefore that the allegation has not been sustained.

[fol. 24] Encinal is alleged to have violated section 20<sup>4</sup> of the Shipping Act, 1916, by receiving information, without the consignee's consent, as to the billing of shipments consigned to another terminal. From July 1936, to June 1939, approximately 28 lists of consignees desiring Howard de-

---

<sup>4</sup> That it shall be unlawful for any common carrier by water or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used. \* \* \*

livery were furnished to Encinal by Swayne & Hoyt, Ltd., Pacific Coast agent of Calmar Steamship Corporation. Calmar rarely calls at any East Bay Terminal except Encinal, its regular East Bay terminal. Ordinarily, cargo destined to other East Bay terminals is discharged at San Francisco and delivered by barge.

In defense of this practice, witness for Swayne & Hoyt testified that Encinal was Calmar's agent and that the lists were sent in order to prevent misdelivery of freight not consigned for Encinal discharge. Another defense, urged by Encinal, is that the information was available to anyone at the custom house in San Francisco; and that in any event, such information was not used to the detriment or prejudice of any shipper or consignee.

The justification given is not convincing. The giving and receiving of such information was not necessary to insure proper delivery of freight. And even though it was not used to the prejudice of shippers or consignees, it was the kind of information which, as the statute reads, "may be used" to the detriment of a shipper or which "may improperly disclose his business transactions to a competitor."

[fol. 25] Commenting on the similar provision of the Interstate Commerce Act, section 15 (11), the Interstate Commerce Commission stated in *Matter of Freight Bills*, 38 I. C. C. 91:

\* \* \* the purpose of the provision in question was to put it (the carrier) under an affirmative restraint against disclosure, apparently to the extent necessary to protect the interest of "such shipper or consignee."

Also, in *Albree v. Boston and Maine Railroad*, 22 I. C. C. 303, 321, that Commission said:

the above language clearly indicates an intent upon the part of Congress to secure to every shipper immunity from a disclosure of his business from the hands of a common carrier \* \* \*

Conceding the purpose to be as testified, nevertheless, receiving the information was a violation of section 20.

#### *Notice of tariff changes*

Reasonable notice of rate changes is not always accorded by San Francisco, Oakland and Stockton. For instance,

Oakland has made many rate changes without prior notice. Stockton changed its warehouse space assignment rate on August 28, 1939, effective August 11, 1939; and issued an entirely new tariff on December 15, 1939, on 15 days' notice.

We stated in *Transportation of Lumber Through Panama Canal*, 2 U. S. M. C. 143 (1939) at page 149:

The failure of a public utility to publish and post a tariff of rates is indefensible. The failure to give adequate notice of rate changes is unjust and unreasonable to the shipping public, because sudden rate changes often result in unexpected losses to, and unjust discrimination against, the shipper or consignee. This is a disruptive factor both in the transportation and marketing of the commodity involved. The question is whether the shipping acts which we administer contemplate the correction by us of these abuses.

\* \* \* To relieve the terminal operator of the duty to give publicity to his charges for services performed by him in place of the carrier would defeat the purpose of the act. The power conferred upon us to prescribe reasonable regulations and practices in connection with the handling and delivery of property whether by carriers or terminal operators, and to prevent undue preference and prejudice in connection therewith, is broad enough to prevent the defeat of the purpose of the act by any such device or situation.

The privately owned terminals are required under State law to file on 30 days' notice. The Northwest Marine Terminal Association, comprising the marine terminals at ports on Puget Sound, the Columbia River and at Portland, Ore., give 30 days' notice of tariff changes.

[fol. 26] The conclusion is warranted that failure of the respondents named to give adequate notice of tariff changes is an unreasonable practice.

### *Free time*

Free time is the period allowed for the assembling of cargo upon, or its removal from the wharves. Upon its expiration, demurrage charges are assessed. The uniformity of the free time period allowed at the larger terminals is more apparent than real. Generally, 10 days are permitted except that San Francisco allows 5 days in coastwise and intercoastal

(in-bound) trade and 7 days in the foreign and offshore trades (in-bound). But under the stress of competition, most of the larger terminals, in cases of emergencies,<sup>5</sup> extend the free time either to cover the additional number of days of delay to the vessel, or, in the case of Oakland, to such number of days as "is warranted and equitable in each individual case", according to the judgment of the Port Manager. This practice appears to be based on the theory that if the slipper is not at fault the terminal operator should waive the demurrage. Obviously, when demurrage is waived, transit shed space, the most valuable in the terminal, is being wasted. This involves a cost which has to be recouped somewhere and it is unreasonable that those shippers who do not use the piers beyond the free time should be forced to bear the burden either directly or indirectly. The practice also affords an opportunity to discriminate between shippers. In *Storage of Import Property*, 1 U. S. M. C. 676, 682, 1937), we said:

The furnishing of valuable free storage facilities to certain shippers and consignees beyond a reasonable period results in substantial inequality of service as between different shippers of import traffic, and is beyond the recognized functions of a common carrier.

[fol. 27] And, in *Storage Charges under Agreements* 6205 and 6215, 2 U. S. M. C. 48, 52 (1939) we stated:

All receivers of cargo must use the piers, and any preferred treatment, by charges or otherwise, of certain classes of cargo results in discrimination against other cargo.

---

<sup>5</sup> Howard, Eneinal, Parr-Richmond, and Stockton publish the following provision: "When vessels are delayed beyond the free time period because of weather, accidents, break-downs or other emergencies, such free time period will be extended to cover the additional number of days of delay to the vessel."

San Francisco grants no extensions of free time. But it permits storage at reduced rates, called "bulkhead storage rates," on cargo which cannot be removed from the pier through circumstances over which the shipper has no control.

Members of Northwest Marine Terminal Association grant no extensions of free time. They, as well as terminals at Los Angeles, provide 10 days' free time in intercoastal (out-bound) and foreign and offshore trades. In other trades these terminals, like San Francisco, grant 5 days except that at Seattle and Tacoma the time is 10 days on coastwise out-bound. The California Commission, in *Case No. 4090, supra*, after a study of the various factors involved in the assembling and distribution of cargo at San Francisco Bay Ports, location of points of origin, vessels' organizations, customs clearance, efficient loading and other matters, recommended free time periods, exclusive of Sundays and holidays, as follows:

Table 1.

	In-bound Days	Out-bound Days
Coastwise and Inland Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transshipment	10	10

Under the recommendation, free time commences (a) at 8:00 A. M. of the first day following the day freight is unloaded from railroad cars or vehicles, or (b) at 8:00 A. M. of the first morning after complete discharge of the vessel, and terminates upon date goods are actually delivered to railway cars, vehicles, barges or vessels. There were two exceptions to the rule for the allowance of free time; (1) allowing Parr-Richmond 21 days, including Sundays and holidays, for the assembling of petroleum or petroleum products, in packages, destined for Trans-pacific ports; and (2) providing that in case vessel is delayed because of certain emergencies, free time will be extended 10 days, the demurrage rates prescribed, except the handling charge, to be charged thereafter against the vessel.

[fol. 28] Counsel for the Commission recommended the prescription of these periods and exceptions thereto as reasonable regulations under section 17 of the Shipping Act, 1916. Nearly all of the witnesses who testified on this subject favored stricter free time regulations than those now in effect. With few exceptions, respondents, in their reply briefs, showed little opposition to the periods recommended, most of their comments being directed to the exceptions proposed. Witness for Parr-Richmond testified that



a free time period of 21 days is necessary at that terminal for petroleum products destined to Transpacific ports, in order to avoid considerable overtime expense for which no compensation is received. There is a conflict of opinion as to when free time should commence, and as to the propriety of the exception extending free time when the vessel is delayed. In *Storage of Import Property*, supra, we prescribed the free time period and carriers were allowed to establish reasonable rules and regulations in connection therewith. On the whole, this disposition of the question has proven satisfactory.

Upon consideration of the evidence outlined above, the free time period set forth in Table 1 is found to be reasonable and proper. Respondent's rules, regulations and practices with respect to free time, in so far as they permit free time allowances greater than outlined in said table, exclusive of Sundays and holidays, are unduly prejudicial and preferential in violation of section 16 of the Shipping Act, 1916, as amended, and unreasonable in violation of section 17 of that act. This finding is without prejudice to the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum or petroleum products when destined to Transpacific ports; and without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances.

#### *Wharf demurrage and storage*

Wharf demurrage is the charge accruing on cargo left in possession of the terminal beyond the free time period. The question here is whether respondents are unduly discriminating between such cargo and that removed during [fol. 29] the free time period. The principal evidence on this point is an analysis of the cost of providing wharf storage to determine whether that class of service is self-sustaining or is furnished at rates so low as to cast a burden upon other services.

There is a direct parallel between the problems faced by respondents and those of the wharfinger industry generally, as reported to Congress by the Federal Coordinator of Transportation. He found that:

The diversity of interests representing parties engaged in furnishing wharfinger service is so great and the



practices which have developed in the industry are so lacking in uniformity as to promote widespread discrimination between those using or desiring to use such services. The industry is suffering from over-expansion of facilities and destructive competition, causing chronically low earnings. (74 Cong. 1st. Sess., House Document No. 89, Pages 56-57).

The wide divergence of interests is accounted for mainly by the type of ownership and the size of the various terminals.

Generally speaking, profit-making is not the primary objective of the operators of the publicly owned terminals. Success of the terminal operations of Oakland and Stockton is measured by the industrial development of the respective cities. Carrying charges, which under the present rates cannot be paid out of terminal revenues, are met by taxation. As stated, San Francisco is precluded by law from fixing its rates so as to yield a profit. Its primary concern is to clear the piers for intransit cargo and its penalty wharf demurrage rates are designed to, and do, accomplish that purpose. However, in order to be competitive, it provides a lower "bulkhead" storage rate for cargo not occupying essential transit space.

Differences in the amount of space available for wharf storage at their terminals account largely for the conflict of interests among the East Bay operators, including Stockton. Encinal, Howard and Stockton, due to their limited facilities, are compelled to shift or high pile much of their cargo to make room for transit operations. Encinal high piles about 86 percent, Howard 60 percent, and Stockton 68 percent of their wharf demurrage cargo. Generally speaking, these respondents favor a penalty rate high [fol. 30] enough either to force the cargo off the pier during free time or induce the cargo owner to declare it for storage during that period. They would set the storage rate high enough to cover the cost of extra handling and high piling. On the other hand, Oakland and Parr-Richmond, with considerable unused space and little high piling required, oppose rates which reflect that expense. The following table presents a comparison of the size of transit shed areas and average number of tons handled per square foot of shed

area by principal respondents for either the fiscal years 1939 or 1940.

Table 2.

	Total square feet of shed area	Tons of general cargo handled	Average number of tons handled per square foot of shed area
Golden Gate and State .....	498,920	223,137	0.45
Oakland .....	714,850	595,029	0.83
San Francisco (37 piers) .....	4,147,284	3,789,977	0.91
Stockton .....	354,495	395,158	1.11
Parr-Richmond .....	239,905	345,716	1.44
Howard .....	226,470	386,439	1.70
Encinal .....	313,710	560,760	1.79

<sup>1</sup> The average at Piers 1 and 3, where most storage service is performed, is 0.60.

In addition, Stockton and Oakland have warehouse facilities adjacent to their terminals with floor space totaling 184,000 square feet and 125,180 square feet, respectively, which are available for space rental. Who the lessees will be and the rates they pay at Stockton, are matters within the discretion of the respective operators. Naturally, this space comes into competition with the limited storage facilities of other terminals. How serious this competition can be is attested by the fact that Oakland's space rate of 3 cents per square foot produces a monthly rate on canned goods of approximately 22 cents as against 37½ cents at the present daily rate. Stockton refused to disclose its present rate which superseded a rate of 1½ cents per square foot per month, which would produce a rate of only 11 cents on canned goods.

The aggressive and destructive competition arising out of these conditions has resulted in a striking lack of uniformity in charges for the same or similar services and the general breakdown of wharf demurrage rates. The following table, showing the different charges per ton on one important commodity group, including canned goods, is illustrative:

[fol. 31]

Table 3.

	Number of days on hand after free time				
	3	15	30	60	90
Oakland, Stockton, Encinal, Howard and Parr-Richmond <sup>1</sup> .....	\$0.0375	\$0.1875	\$0.375	\$0.75	\$1.125
State Terminal (includes 50¢ handling charge) <sup>2</sup> .....	0.65	0.65	0.90	1.20	1.50
Golden Gate <sup>2</sup> .....	0.15	0.15	0.40	0.70	1.00
San Francisco:					
Penalty Wharf Demurrage:					
Outbound Offshore Cargo <sup>3</sup> .....	0.075	1.075	2.575	5.575	8.575
Inbound cargo <sup>4</sup> .....	0.25	1.25	2.75	5.75	8.75
Bulkhead wharf demurrage <sup>5</sup> .....	0.125	0.375	0.625	1.125	1.625

<sup>1</sup> 1¼¢ per ton per day.<sup>2</sup> First 20 days 15 cents per ton; next 30 days or fraction 25 cents per ton; succeeding periods of 30 days 30 cents per ton.<sup>3</sup> 2½ cents per ton per day 1st to 3rd day; 5 cents per ton per day 4th to 7th day; 10 cents per ton per day for each succeeding day.<sup>4</sup> 25 cents per ton for first 5 days or part thereof; 50 cents per ton for each succeeding period of 5 days or part thereof.<sup>5</sup> 12½ cents per ton (W/M) for each 7 days or part thereof.

The rates have been so reduced and the rules and practices so liberalized that it is difficult to distinguish between demurrage services and warehouse storage services. Apparently the only difference is in the responsibility of the terminal, that is, to deliver to the truck from storage, while under wharf demurrage, the truck comes to the pile. At the low rate of 1¼ cents per ton per day the shipper may leave the cargo on demurrage for extended periods before it equals storage charges. Goods paying demurrage may be high piled one day, at a cost of 20 to 25 cents per ton to the terminal, and delivered the next day with no compensation other than the 1¼ cents per ton per day.

Chronically low earnings are the inevitable result of the conditions outlined above. As will be demonstrated, the present rates as a whole produce revenues which are far below the cost of the service as computed according to the Edwards-Differding formula. The general theory of this formula is that the responsibility of providing adequate revenues for essential terminal facilities rests upon the cargo and the carrier. The charge for such service is made [fol. 32] to cover the direct cost incurred in rendering the service and some portion of the joint or overhead costs which are properly attributable to it.

Edwards and Differding analyzed costs applicable to the vessel, such as dockage and service charges, and costs in

connection with cargo<sup>6</sup> such as tolls and wharf demurrage and storage. They determined the portions and costs of the physical plant to be compensated by the vessel and the cargo. In addition, they prepared a study of the pile characteristics of different commodities in connection with floor areas required for their storage. Taking the lowest combination of handling and floor space costs, that of Encinal and Howard,<sup>7</sup> respectively, they constructed a scale of wharf storage and demurrage rates, hereinafter called the *4090 scale*, which was recommended by the California Commission in *Case No. 4090 Supra*. See Appendix, columns 4 and 5.

The *4090 scale* is approximately 33 percent higher than the level of rates in effect in 1935, which is substantially equivalent to the present basis. In view of the testimony that costs have increased materially since 1935, and labor efficiency has decreased, there can be no question that the present level as a whole is far from compensatory. Any doubt on this score is dispelled by a study prepared for this proceeding showing a comparison of revenues, expenses, and unit costs of demurrage based on the formula. The result of the cost studies at Encinal, Howard, and Stockton, is shown in the following table:

[fol. 33]

Table 4.

	Encinal year ended 10/31/1939	Howard year ended 10/31/1939	Stockton year ended 6/30/1940
Revenue.....	\$24,289.35	\$31,359.46	\$15,935.80
Expense.....	59,572.98	45,033.49	34,441.72
Loss on basis of existing rates.....	35,283.63	13,674.03	18,505.92
Average monthly revenues per ton, all commodities.....	312	426	645
Unit costs:			
Fixed costs per ton, excluding high- piling.....	336	489	972
High piling.....	680	372	184
Variable Costs			
Overhead per ton per 30 days.....	115	153	204
Floor space cost per square foot per 30 days.....	057	031	077

<sup>6</sup> An analysis was made of the cost of floor space, checking cargo to or from the shippers, miscellaneous handling or high piling of cargo, and overhead costs for superintendence, accounting, billing, claims, insurance, watchmen, etc.

Canned goods is the heaviest moving and most competitive commodity handled by respondents in outbound traffic. The cost per ton per month of handling this commodity, based on the unit costs developed above, excluding high piling, is approximately 88 cents at Encinal and Howard and \$1.75 at Stockton.<sup>7</sup> The revenue at current rates is 37.5 cents. Note that Encinal, with the lowest unit cost per ton, failed by 50.5 cents per ton per month, or 134 percent, to earn the actual cost of its wharf storage service. Stockton, with the highest cost, failed by \$1.375 per ton per month, or 367 percent. The comparison in the Appendix of minimum costs on 14 commodities, column 10, with present revenue thereon, column 3, indicates that costs greatly exceed earnings.

No analysis was made of Parr-Richmond's current operations because its general cargo operations are not considered typical in the East Bay area. But based on cost of floor space in 1935 of 7.83 cents at its terminal No. 3, where most Storage service is performed, and the lowest unit cost for variable and non-variable overheads found in 1935, excluding moving, high piling and checking costs, its present rates are not compensatory. For instance, on canned goods the revenue is 37.5 cents, cost 74.21; slate granules, revenue 30, cost 64.03; and steel sheets, revenue 30, cost 36.63.

Unit costs at other terminals could not be developed because of the accounting methods they use. However, Oakland and San Francisco submitted general data which, when considered with the cost developed by Howard, Encinal and Stockton, indicate that their rates are far from compensatory. The average monthly demurrage revenue per ton received on all commodities at Golden Gate and State terminals is 30.9 cents, and by Oakland 24.5 cents. It will be noted that Oakland's revenue is considerably below the fixed cost developed for normal piling at Encinal, the lowest cost terminal in the area, even excluding floor space cost which Oakland contends is not properly includible because the space would be idle if not used for storage.

<sup>7</sup> Includes fixed cost per ton, (excluding high piling), overhead and floor space computed on basis of .057, .031 and .077 cents, respectively, x 7.4 square feet which is the space occupied by a ton of canned goods normally piled.



In fact, Oakland's revenue under existing rates on canned goods does not equal its floor space cost alone, without any allowance for additional costs of handling, high-piling, checking or making partial deliveries, which services admittedly are performed as to some cargo. Unit construction costs of piers and wharves available for demurrage and storage at Oakland range from \$3.84 to \$4.39 per square foot as compared with \$2.95 at Encinal. Therefore, it is reasonable to conclude that Oakland's space cost under the Edwards-Differding formula would not be less than at Encinal. As indicated in footnote 7, floor space cost on canned goods for 30 days at Encinal, computed according to the formula, would amount to 42 cents, which compares with Oakland's revenue for the same period of 37½ cents. The deficit of 4½ cents at Oakland would be increased to 19½ cents, if 15 cents, which is the portion of the handling charge (Appendix, Column 4) imposed to cover the cost of making partial deliveries, were added.

The need for an upward revision in wharf storage rates is also evidenced by the income statements of respondents for the calendar year 1939 or fiscal year 1940. The result of their operations is illustrated by the following table:

[fol. 35]

Table 5

	Net Income	Loss
Oakland	\$78,950.67 (1)	\$95,859.43 (2)
Stockton	29,447.47	99,491.55 (3)
Encinal		20,758.30
Howard		7,473.95
San Francisco	215,356.85 (4)	

1. If loss from airport operations be excluded.
2. If interest on bonds paid by City (other than interest on bonds assignable to airport) be included.
3. If revenue from county tax funds be deducted.
4. No deduction made for depreciation.

The foregoing analysis of costs shows unmistakably that users of wharf storage service are not providing their proper share of essential terminal revenues. It must be apparent also that a disproportionate share of this burden is being shifted to users of other terminal services whose charges are based on rates considered to be reasonable in 1935. Singularly enough, Howard's deficit from all operations in 1939 would have been wiped out and net profit



shown if wharf storage charges had been based on the *4090 scale*, assuming that it would have increased revenue by 33 per cent. The same would be true as to both Howard and Encinal if they had charged only the actual cost of furnishing the service in 1939 as developed by the formula.

The next question is whether granting storage at non-compensatory rates is unduly preferential and prejudicial in violation of section 16<sup>k</sup> of the Shipping Act, 1916, and an unreasonable practice in violation of section 17<sup>9</sup> thereof. The storage cases previously mentioned, 1 U. S. M. C. 676, and 2 U. S. M. C. 48, establish two propositions. First, the [fol. 36] furnishing of free storage facilities beyond a reasonable period results in substantial inequality of service as between shippers. Clearly, the furnishing of such facilities at non-compensatory rates is merely a less serious form of the same offense. Second, and preferred treatment by charges or otherwise of certain classes of cargo results in discrimination against other cargo. In the latter case respondents were found to be defeating the free time regulation prescribed in the former case by assessing merely nominal storage charges on coffee after free time. As to such charges, we stated:

They must, therefore, be deemed to be a constituent part of a practice pertaining to the handling, storing

---

<sup>k</sup> That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

<sup>9</sup> Every such carrier and every other person subject to this act shall establish, observe and enforce just and reasonable regulations and practices, relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

or delivery of property. We not only have the authority under section 17 to prescribe just and reasonable regulations and practices, but also the power to order them enforced. Clearly, therefore, any means or device tending to nullify or interfere with the enforcement of such regulations and practices must be subject to our condemnation.

The charges were found to be in violation of both section 16 and 17, and respondents were ordered to desist from establishing and collecting storage charges on coffee lower than on other import commodities. This decision was upheld in *Booth Steamship Company, et al., v. United States*, 29 Fed. Supp. 221. The charges here involved may or may not be nominal. But the court intimated in the *Booth case* that the charges there were more than nominal, and stated:

The Commission \* \* \* had the authority and the power under the Shipping Act to conduct this investigation and make its findings and conclusions and its order.

The subject of non-compensatory storage charges was exhaustively treated by the Interstate Commerce Commission in *Ex Parte 104, Part VI, Warehousing and Storage of Property by Carriers at the Port of New York, N. Y.*, 198 I. C. C. 134, 216, I. C. C. 291. This case involved the operation of warehouses by railroads serving New York through which the carriers rendered storage services to shippers below cost as an inducement to use their lines. In 216 I. C. C. 291, 351, that Commission said:

In the instant case it is established that those persons who are able to avail themselves of storage and handling at the carriers' non-compensatory rates, and whose costs from shipside to destination are thereby [fol. 37] reduced by the amount of the difference between compensatory rates and the non-compensatory rates, receive an undue and unreasonable preference or advantage over those persons whose commercial practices will not permit of their placing their goods in storage at New York, but require direct shipment from shipside to destination. Not only is the latter class of persons unduly or unreasonably prejudiced or disadvantaged, but such prejudice and disadvantage extends to all persons who are compelled to bear the carriers'

transportation rates which are dissipated by their storage practices. The provisions of section 3 conflict with the asserted rights of the respondent carriers . . . to sell their storage at a price less than the cost of that service.

This decision was upheld by the Supreme Court in *Baltimore & Ohio Railroad Company et al., v. United States et al.*, 305 U. S. 507. At page 524 the court said:

Since the carrier warehouse rates, as found by the Court . . . and Commission, are not open to all shippers alike, there is violation of §§ 2 and 3 (1) prohibiting discrimination and unreasonable prejudice. The rail transportation rates have charged against them the loss occasioned by warehousing practices designed to attract a volume of rail business.

Oakland contends that there can be no discrimination since the rates are open to all shippers alike. In a sense this is true. However, the commercial practices of those shippers who supply the major portion of tonnage handled by respondents obviously do not permit of their placing their goods in storage. Furthermore, it should not be overlooked that the practice of furnishing one service below cost has the tendency to prevent any downward revisions of rates for other services however justified they may be. Clearly, such a practice is unreasonable.

The decisions cited are ample authority for condemning the existing wharf storage rates and practices as being in violation of section 16 and 17, prohibiting undue prejudice and unreasonable practices.

This brings us to a consideration of the level of rates which respondents should observe as a reasonable practice. Counsel for the Commission recommend prescription of the 4090 scale shown in column 4 and 5 of the Appendix. Those rates were designed to serve a double purpose—to clear the transit spaces within a reasonable time, and, where the terminal facilities permit, to enable the operator to store goods at rates commensurate with the cost of the service [fol. 38] as determined in 1936. A penalty demurrage charge of 5 cents per day is exacted for the first five days beyond the expiration of free time. This charge is intended to compel the removal of cargo off the dock or into storage. Cargo which goes on storage either within or at the expira-

tion of free time is required to pay a handling charge. This handling charge compensates the terminal operator for a portion of the fixed costs which attach to cargo that is placed on time storage. Such fixed costs include handling, delivery to consignee at the end of storage, high piling where required, billing, and certain overhead expenses incidental to the receiving and delivery of cargo on storage. Storage charges are provided on basis of a fifteen-day period. The rates and charges were based upon a consideration of cost of providing the service; ability of the cargo to pay, and competitive conditions. The California Commission states that the proposed increase averages less than 15 cents per ton per month on all commodities for the periods over which they are stored.

The soundness of the Edwards-Differding studies, which are embodied in the proposed scale, is amply demonstrated by the record. However, various objections have been raised to the scale and its method of application.

Howard favors a daily, as well as a period basis. It contends that the abrupt increase of charges on the sixth day after expiration of free time would discourage short-term storage, especially on canned goods, and divert cargo to warehouses. Mr. Differding testified that a period basis, which is applicable at the San Francisco facilities, would be more equitable than a daily basis which is now in effect at East Bay Terminals and Stockton. His objection to a daily basis is that it allows the cargo owner to remove his goods before they have been on storage long enough to cover all fixed charges. He expressed doubt that the collection of storage charges could be properly policed if the cargo owner is allowed to choose between a daily and a period basis.

Howard and Encinal contend that the proposed handling charges and period storage rates are too low. Encinal would more than double the handling charge on certain commodities; Howard on practically all. Both favor a monthly period basis with slightly increased charges. Admittedly, the 4090 scale is too low. But with only general testimony as to the increased cost since 1935 of record and no current data as to the other rate making factors, we would not be justified in attempting to fix compensatory charges on individual commodities. Stockton favors the proposed basis generally but advocates the addition of a wharf-placement charge to cover the cost of transferring storage cargo from the wharf to off-wharf storage areas.

Oakland and Parr-Richmond, with a large amount of unused transit space available, criticize the inclusion of the cost of high piling and extra handling because at their terminals little additional handling of cargo is necessary. This argument overlooks the fact that the handling charge is directly related to the most efficient use of floor space. If it was cheaper to leave goods as the stevedores or the shipper dropped them, this cost was used; but where the savings in floor space cost more than compensated for the expense of high piling over the period the goods remained on storage, costs based on high piling were used as they resulted in a lower cost to the shipper. Also, the argument ignores the necessity for an adequate return on the costs of floor space because if the cargo is not handled by high piling or otherwise, it follows that additional costs are automatically incurred. Consequently, the return of revenue to the terminal operator for the transit shed floor space must be derived from an increase in the wharf demurrage rates to compensate the terminal for the excess space used when the goods are not high piled, in comparison with the economy of space which is accomplished when the goods are high piled. The result would be a substantial increase in the wharf demurrage and storage rates or, in the alternative, the wharf demurrage should be plussed by a handling charge.

There is also the general objection made by Oakland and San Francisco that the Edwards-Differding studies did not cover their operations. But this fact loses its significance when it is demonstrated that the average monthly revenue per ton received by Oakland is lower than the fixed cost [fol. 40] per ton of the lowest cost terminal in the Bay area, even excluding costs of high piling, variable overhead and floor space; and its revenue under existing rates on canned goods is lower than its cost of floor space alone. It is not believed that any increases in storage rates would result from the establishment of the *1090 scale* at the San Francisco assigned piers.

Many other matters, dealing with individual problems in connection with wharf storage, were touched upon by various respondents. However, the present record will not support an order designed to do more than correct, to a limited extent only, the basic problem of respondents, namely, chronically low earnings.

Upon consideration of all the evidence, we are of the opinion that the *1090 scale*, including the 5-cent penalty rate,



should be adopted. This conclusion does not rest upon the theory that such basis is a "cure-all", but that it (1) will bring about uniformity on a minimum basis which incidentally is not in excess of the cost of the service to any of the respondents, (2) that it will remove many of the abuses disclosed by the record, and (3) that it will provide a standard from which departures can be made on individual commodities as they appear to be justified by further proof.

In considering further relief, respondents should not overlook the possibilities of solving their problems through section 15 agreements. In *Transportation of Lumber, etc.*, supra we refrained from prescribing rules and regulations for terminals, with the statement that:

"For the present we suggest that self-regulation through the medium of section 15 agreements approved by us is a much simpler and more satisfactory solution of the problem. A cooperative working arrangement among the terminals, designed to bring about a stable terminal rate structure for the handling of intercoastal lumber, would not only promote the orderly transportation and marketing of lumber, but would foster fair and regulated competition among the terminals themselves."

Respondents have taken the first step in this direction by forming associations and filing cooperative working agreements which have been approved by us. These agreements, fully implemented and utilized, and strictly adhered to, will [fol. 41] go far toward avoiding further regulation.

#### *Leasing and rental arrangements*

The remaining question is whether the practice of Oakland and Stockton of leasing or renting space in warehouses adjacent to their piers at rates below their regular wharf storage rates is unreasonable and unduly preferential of the lessees of such space. In its reply brief, Oakland states that its facilities so used will henceforth be used for other purposes and that it will discontinue the dual set of rates at all operative facilities. Witness for Stockton testified that property stored in its leased facilities is there awaiting sale and that subsequently it may enter into either water, rail or truck transportation. He stated that when cargo in water transportation is stored in the warehouses the regular tariff rates are applied. The record does not war-



grant a finding that the practice in question is unlawful. However, respondents are admonished that any space rental device used for the purpose of unduly discriminating between storers of cargo in water transportation is strictly in violation of section 16 of the Shipping Act, 1916, as amended.

### *Findings*

We find:

1. That respondents including Board of State Harbor Commissioners for San Francisco Harbor, Board of Port Commissioners of the City of Oakland and Stockton Port District, are "other persons subject to this act," as defined in section 1 of the Shipping Act, 1916, as amended.
2. That respondents Board of Port Commissioners of the City of Oakland, Howard Terminal, and Stockton Port District are carrying out agreements within the purview of section 15 of the Shipping Act, 1916, as amended. Said agreements, namely the agreement between Board of Port Commissioners of the City of Oakland and McCormick Steamship Company, dated March 1, 1932, the agreement between said Board and Howard Terminal, dated November 5, 1914, and the agreement between Stockton Port District and Port [fol. 42] of Stockton Grain Terminal, dated July 23, 1936, should be filed immediately with the Commission for approval. Pending compliance, the record will be held open.
3. That respondent Encinal Terminals collected service charges from McCormick Steamship Company and Quaker Line on cargo billed to, but not delivered at Encinal, notwithstanding Encinal performed no service in connection with such cargo. Said practice is not authorized by Encinal's tariff and is unreasonable in violation of section 17 of the Shipping Act, 1916, as amended.
4. That respondent Encinal Terminals has knowingly received from Swayne & Hoyt, Ltd., lists of consignees desiring delivery at another terminal, without the consent of said consignees. Said act is in violation of section 20 of the Shipping Act, 1916, as amended.
5. That respondents Board of State Harbor Commissioners for San Francisco Harbor, Board of Port Commissioners of the City of Oakland and Stockton Port District have failed in certain instances to give reasonable notice of tariff

changes. Unless good cause exists for shorter notice, 30 days' prior notice of tariff changes should be accorded by said respondents. No order in this connection is deemed necessary now, but any shipper or consignee adversely affected by lack of adequate notice of tariff changes should bring the matter to our attention.

6. That there is lack of uniformity in, and application of, free time rules, regulations and practices of respondents; and that the manner in which they are applied affords opportunity for unequal treatment of shippers. Said rules, regulations and practices are unduly prejudicial and preferential in violation of section 16, and unreasonable in violation of section 17 of the Shipping Act, 1916, as amended. We prescribe, and shall order enforced a regulation providing that free time allowances should be no greater than the periods set forth in Table 1 of this report, [fol. 43] exclusive of Sundays and holidays, without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances and to the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum products when destined to Trans-pacific ports.

7. That respondents' rates, rules, regulations, and practices relating to wharf demurrage and wharf storage are lacking in uniformity; that, as a whole, respondents are according wharf storage services at non-compensatory rates which result in unequal treatment of users and non-users of such services. Said rates, rules, regulations and practices are unduly prejudicial and preferential in violation of section 16, and unreasonable in violation of section 17 of the Shipping Act, 1916, as amended. We prescribe, and shall order enforced as a reasonable regulation (1) a penalty charge of 5 cents per ton per day upon cargo remaining beyond the free time period and not declared for storage; when cargo is not declared upon the expiration of the fifth day, it shall automatically go into storage and the rates and charges hereinafter recommended shall thereafter apply, (2) the handling charges appearing in Column 4 of the Appendix to be charged when cargo goes into storage, and (3) the rate for 15-day periods or fractions thereof appearing in column 5 of the Appendix, to be charged while cargo is in storage after it has been declared for storage or after it automatically goes into storage upon the expira-

tion of the fifth day after the end of the free time period. The rates and charges herein prescribed are considered to be on a minimum basis, and the finding is without prejudice to the establishment of higher rates and charges wherever justified, and should not be construed to require the reduction of present rates which are higher than the prescribed level.

8. That in the enforcement of the regulations herein prescribed, it is necessary that respondents file their tariffs with the Commission.

An appropriate order will be entered.



Comparative statement showing for East Bay terminals, daily wharf demurrage rates and revenue for 30 days under existing tariffs; Rates proposed by California Railroad Commission in Case 4090 and revenue thereunder for 30 days; and minimum cost of storage with normal piling for 30 days on those commodities for which floor space requirements are available rates, revenue, and costs in cents per ton of 2,000 pounds

Commodity (1)	Rate and Revenue Under Existing Tariffs		Rates and Revenue under Case 4090		Minimum Cost per ton for 30 days		All Other Costs (9)	Total Costs (10)	
	Daily Rate (2)	Revenue 30 days (3)	Handling Charge (4)	Storage per 15-day period or Fraction (5)	Revenue	Floor Space Cost			
					for 30-day period (6)	Sq. feet Required per ton (7)			Cost at 3.19 cents per Sq. Foot (8)
Merchandise, N. O. S.	2	60	40	20	80				
Ammonia, sulphate of	1½	45	30	15	60	15 38	49 06	45 23	94 29
Apricot kernels	1¼	37½	30	25	80				
Beans, dried, in sacks	1	30	15	12½	40	10 00	31 90	45 23	77 13
Canned goods, N. O. S. in cases, outbound.	1¼	37½	25	12½	50	7 40	23 60	45 23	68 83
Cotton	1¼	37½	30	15	60	14 00	44 66	45 23	89 89
Cotton linters	1¼	37½	30	20	70	17 00	54 23	45 23	99 46
Compound, viz., cleaning, scouring and washing, in pkgs.	1¼	37½	15	12½	40	7 54	24 05	45 23	69 28
Fertilizers:									
Nitrate of soda, in sacks									
Potash, in sacks						6 85	21 85	45 23	67 08
Ammonia, phosphate, cyanamide, super-phosphate, urea	1½	45	30	15	60	7 43	23 70	45 23	68 93
Fruit, dried, in bags or cases	1¼	37½	30	15	60				
Grain, N. O. S.	¾	22½	25	12½	50	7 52	23 99	45 23	69 22
Hops, in bales	4	120	30	45	120				
Iron and steel, held in uncovered areas	1	30	20	10	40				
Meal and meal cake (oil cake, sesame seed meal)	1¼	37½	30	15	60				
Peas, dried	1¼	37½	15	12½	40				

Pipe, iron and steel, held in uncovered areas.....	1	30	15	12½	40				
Rice, in sacks.....	1¼	37½	30	15	60				
Scrap, iron or steel.....	1	30	15	10	35				
[fol. 45]									
Seed, mustard, hemp or sesame.....	1¼	37½	30	15	60	15 38	49.06	45.23	94.29
Shook.....	2¾	82½	30	25	80				
Sisal.....	3	90	50	17½	85	24 10	76.88	45.23	122.11
Soda ash, bags.....	1½	45	30	15	60	12 27	39.14	45.23	84.37
Steel Sheets.....	1	30	15	10	35	1 66	5.30	45.23	50.53
Sugar.....	1¼	37½	30	15	60	7 00	22.33	45.23	67.56
Tin Plate.....	1	30	15	10	35				
Tires, pneumatic.....	2	60	50	75	200				
Tomato, puree <sup>2</sup> .....	(2½¢ per case per season) <sup>2</sup>			(2½¢ per case per season) <sup>2</sup>					
Vehicles, motor, on wheels.....	10	300	50	125	300				
Wool: In Bales.....	3	90	30	30	90				
In Bags.....	5	150							
Veneer, wallboard.....	7	210	50	50	150				

<sup>1</sup> Exception: When beans are held on wharf demurrage for period beyond which a total of \$1.00 per ton of 2000 pounds has been assessed within a season, no further charge will be made for that season. Under this provision "season" ends August 31st next.

<sup>2</sup> When season wharf demurrage rate is requested by shipper at time of delivery of merchandise to terminal, the rate for the season commencing on and after August 15th and ending March 1st next, is 2½ cents per case, payable in advance.

Note: Daily penalty rate proposed by California Commission. A charge of 5 cents per ton per day shall be assessed upon all cargo remaining beyond the free time period and not declared for storage, except that when cargo is not declared upon the expiration of the fifth day the demurrage rates set forth above (columns 4 and 5) shall thereafter apply.



[fol. 46]

## ORDER

At a Session of the United States Maritime Commission,  
Held at its Office in Washington, D. C., on the 11th day  
of September, A. D., 1941

No. 555

## Practices, Etc. of San Francisco Bay Area Terminals

This case having been instituted by the Commission on its own motion and without formal pleading, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof:

*It is ordered;* That respondent Encinal Terminals be, and it is hereby notified and required to cease and desist, and hereafter abstain from the violations of the Shipping Act 1916, as amended, herein found in findings No. 3 and No. 4.

*It is further ordered,* That respondents be, and they are hereby, notified and required to cease and desist, on or before October 27, 1941, and thereafter to abstain from allowing greater periods of free time than the periods set forth in Table 1 of the report herein, exclusive of Sundays and holidays, without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances and the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum products when destined to Trans-Pacific ports;

*It is further ordered,* That respondents be, and they are hereby, notified and required to cease and desist, on or before October 27, 1941, and thereafter to abstain from publishing, demanding or collecting wharf demurrage and wharf storage rates which shall be less than the minimum rates found reasonable in Finding 7 herein, namely, (1) a penalty charge of 5 cents per ton per day to be charged [fol. 46a] on cargo remaining beyond the free time period and not declared for storage; when cargo is not declared upon the expiration of the fifth day, it shall automatically go into storage, (2) the handling charges appearing in



column 4 of the Appendix hereto to be charged when cargo goes into storage, and (3) the rates for 15-day periods or fractions thereof appearing in column 5 of the Appendix hereto, to be charged while cargo is in storage after it has been declared for storage or after it automatically goes into storage upon the expiration of the fifth day after the end of the free time period;

*It is further ordered.* That respondents be, and they are hereby, notified and required to file with the Commission and keep open to public inspection, schedules showing all the rates and charges for the furnishing of wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water;

*It is further ordered.* That these proceedings shall be held open pending compliance with the order herein, and that said order be without prejudice to the rights of respondents or any of them, or of any interested party to apply in the proper manner for a modification as to any specified rate, charge, rule, or regulation; and

*It is further ordered.* That as to all other matters not specifically covered by this order, this proceeding be, and it is hereby, dismissed.

By the Commission.

(Sgd.) W. C. Peet, Jr. Secretary. (Seal.)

[fol. 47]

EXHIBIT "B"

BEFORE THE UNITED STATES MARITIME COMMISSION

Docket No. 555

IN THE MATTER OF SERVICES, RATES, CHARGES, TOLLS, RENTALS, Rules, Regulations, Classifications, Agreements, Acts, Practices; and Operations of the San Francisco Bay Area Terminals Named Herein.

PETITION OF RESPONDENTS STATE OF CALIFORNIA AND BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, NAMED HEREIN AS BOARD OF STATE HARBOR COMMISSIONERS, PORT OF SAN FRANCISCO, FOR RECONSIDERATION

[fol. 48] Come now State of California and Board of State Harbor Commissioners for San Francisco Harbor, named

herein as Board of State Harbor Commissioners, Port of San Francisco, respondents in the above entitled proceeding, and respectfully petition the United States Maritime Commission to grant a reconsideration of its order heretofore made and filed herein on September 11, 1941, and in support of said petition, respectfully show:

# I

That said order is erroneous in that it denied said respondents' motion to dismiss said proceeding as to said respondents, which motion was made by said respondents at the hearing in said proceeding, and in each of their briefs filed herein, and at the oral argument in said proceeding, in the following words, as follows:

[fol. 49] "Said respondents move to dismiss the above entitled proceeding against respondents, Board of State Harbor Commissioners for San Francisco Harbor and the State of California, upon the following grounds, to-wit:

1. That the United States Maritime Commission has no jurisdiction of either of said respondents or of the subject matter of said proceeding so far as it relates to said respondents or either of them.

2. That the United States Maritime Commission is without authority to investigate any of the practices or acts of the State of California or the Board of State Harbor Commissioners for San Francisco Harbor, an agency of the State of California.

3. That there is no constitutional authority for Congress to extend or exercise its regulatory power in any manner over either of said respondents.

4. That the Shipping Act of 1916, as amended, is not intended to apply and does not apply to or include these respondents, the State of California or the Board of State Harbor Commissioners for San Francisco Harbor, and that the United States Maritime Commission is not authorized or empowered by statute or otherwise, to investigate or regulate either of said respondents with reference or in relation to any of the matters or things referred to in the Shipping Act of 1916, as amended, and particularly as referred to in Sections 1, 15, 16, 17 and 20 of said act, or otherwise."

## II

The said order is erroneous in that it finds and determines that the United States Maritime Commission had and has jurisdiction of each of these respondents in this proceeding.

## III

That said order is erroneous in that it finds and determines that Congress has constitutional power to regulate respondent, State of California, a state of the United States of America, acting by and through respondent, the Board of State Harbor Commissioners for San Francisco Harbor, an agency of said state, in the ownership and/or operation of a wharf.

[fol. 50]

## IV

That said order is erroneous in that it did not find and determine that Congress has no power to regulate any owner and/or operator of a wharf or any wharfinger.

## V

That said order is erroneous in that it determines that Congress, in enacting the Shipping Act of 1916, as amended, intended to give and did give the United States Maritime Commission power to regulate respondent, State of California, a state of the United States, in the ownership and/or operation of a wharf, by and through the Board of State Harbor Commissioners for San Francisco Harbor, an agency of said state.

## VI

That said order is erroneous in that it determined that each of these respondents is an "other person subject to this act" as that term is used in Section 1 of the Shipping Act of 1916, as amended.

## VII

That said order is erroneous in that it prescribes for all of the respondents herein, a shorter and different free time allowance from the allowance which is presently in effect in the tariff of these respondents, and orders all of said respondents to cease and desist, on or before October 27, 1941, and thereafter to abstain from allowing greater periods of free time than those set forth in Table 1 of the report referred to in said order.

## VIII

That said order is erroneous in that it does not find that wharf demurrage rates on those parts of the wharves and [fol. 51] piers of all the respondents in this proceeding which are used for "intransit purposes" should be penalty rates sufficiently high to force goods off of said parts of said wharves and piers.

## IX

That said order is erroneous in that, in determining the rates of wharf demurrage and storage required by said order to be charged by all of the respondents herein, no consideration is given to a charge for moving goods declared for storage, from wharves to off wharf storage areas or warehouses.

## X

That said order is erroneous in that, in prescribing minimum demurrage and wharf storage rates and finding such rates to be reasonable, said order is based entirely upon the assumption that demurrage and storage rates should be compensatory and that no account is taken of the necessity for penalty rates upon those parts of facilities of all of the respondents which are devoted primarily to in transit operations.

## XI

That said order is erroneous in that, in prescribing minimum wharf demurrage and wharf storage rates, the Commission based its finding of the amount and the reasonableness of such rates upon a purported study of the cost to the respondents herein, of furnishing wharf storage and facilities for allowing goods to remain on the wharves and piers of said respondents beyond the allowable free time, which said costs were based upon a study and investigation which was more than four (4) years old, and which did not include any study of costs for furnishing wharf [fol. 52] storage and such facilities, upon the piers and wharves of these respondents.

## XII

That said order is erroneous in that without jurisdiction to make any finding, determination or order in this pro-

ceeding as to either of these respondents, the Commission made all of the findings, determinations, and orders, hereinabove mentioned in this petition, and further ordered these respondents to file with the Commission and keep open to public inspection, schedules showing all rates and charges for the furnishing of wharfage, dock, warehouse and other terminal facilities in connection with a common carrier by water.

### XIII

That the said order violates Section 9 of Article I of the United States Constitution in that it is a regulation of commerce which gives preference to the ports of the states of Washington and Oregon over the respondents in this proceeding in two respects, namely, by prescribing higher wharf storage rates for these respondents while permitting such other ports to maintain lower rates than those prescribed, and by prescribing a shorter free time period for these respondents than is permitted to remain in effect in such other ports. That such other ports in the states of Washington and Oregon are in competition with these respondents in connection with the transpacific and inter-coastal trades.

These respondents respectfully urge the Commission that it reconsider its said order for each of the reasons above [fol. 53] set forth, and in that connection to reread the original, and reply briefs filed by these respondents in this proceeding. No good would be achieved to repeat here what was set forth in those briefs. There is little to add to the points that were made, and these respondents are convinced of the soundness of their position.

In view of the fact that the order of the Commission becomes effective on October 27, 1941, it is respectfully requested that the Commission determine forthwith whether or not it will reconsider the issues involved in this docket. That if reconsideration is given, the effective date of the order be postponed until such a reasonable time after the determination on reconsideration has been reached. That if reconsideration be not granted, that these respondents receive notice to that effect a reasonable time before Octo-



ber 27, 1941, in order that they may take such steps in regard to the order as they may be advised.

Dated at San Francisco, California, October 15, 1941.

Respectfully submitted, State of California and Board of State Harbor Commissioners for San Francisco Harbor, by J. F. Marias, President of Board of State Harbor Commissioners for San Francisco Harbor, Earl Warren, Attorney General of the State of California, Lucas E. Kilkenny, Deputy Attorney General, Attorneys for Said Petitioners.

[fol. 54] STATE AND NORTHERN DISTRICT OF CALIFORNIA,  
City and County of San Francisco, ss:

J. F. MARIAS, being first duly sworn, deposes and says:

That he is a duly appointed, qualified and acting officer of the State of California, one of the respondents and petitioners herein, and a duly appointed, qualified and acting member and President of the Board of State Harbor Commissioners for San Francisco Harbor, one of the respondents and petitioners herein, and duly authorized to sign this petition and to make this verification for and in behalf of both of said respondents; that he is the person who so signed said petition; that he has read the foregoing petition and knows the contents thereof; that the same and the facts stated and set forth therein are true of his own knowledge except as to those matters therein stated on information or belief, and as to those matters, he believes it to be true.

J. F. Marias.

Subscribed and sworn to before me, this 15th day of October, 1941. Ella Cook Kelly, Notary Public, in and for the City and County of San Francisco, State of California. (Seal.) My Commission expires December 23, 1944.

[fol. 55] CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by

mailing via first class mail, postage prepaid, a copy to each such party in sufficient time to reach such party on the due date.

Dated at San Francisco, California, this 15th day of October, 1941.

Lucas E. Kilkenny, Attorney for Petitioners.

[File endorsement omitted.]

[fol. 55-1] IN THE SOUTHERN DIVISION OF THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 22002-L

CITY OF OAKLAND, a Municipal Corporation, Acting by and  
Through Its Board of Port Commissioners, Petitioner,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME  
COMMISSION, Defendants

PETITION AND BILL FOR INJUNCTION—Filed October 21, 1941

Comes now the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, who seeks in this proceeding to enjoin, set aside, annul and suspend, so far as it relates to petitioner, a certain affirmative order of the defendant United States Maritime Commission made and entered on the 11th day of September, 1941, in a proceeding before said Commission and designated, "In the Matter of Services, Rates, Charges, Tolls, Rentals, Rules, Regulations, Classifications, Agreements, Acts, Practices and Operations of the San Francisco Bay Area Terminals Named Herein", and numbered 555 on the docket of said Commission, and for cause of action respectfully alleges:

[fol. 55-2]

I

That the City of Oakland is a municipal corporation duly organized and existing under and by virtue of the constitution and laws of the State of California, and governed by a freeholders' charter; that the Board of Port Commissioners of the City of Oakland is a department of the City of Oakland, duly organized and existing under and

by virtue of such charter; that said Board of Port Commissioners, by virtue of such charter, is vested with the sole and exclusive jurisdiction of the City of Oakland over that certain area of the City described in said charter and designated as the Port Area, and has and exercises by virtue thereof all the power of the City of Oakland with respect to all of its waterfront, tide and submerged lands and facilities for the promotion and accommodation of navigation constructed thereon.

## II

The United States of America is made defendant in this suit pursuant to Section 31 of the Shipping Act, 1916, as amended (39 Stat. 738, C. 341, Section 31; 46 U. S. Code, Section 830), 28 U. S. Code, Section 41, Subd. (28) and Title 28, U. S. Code, Sections 43 to 48 inclusive.

That defendant United States Maritime Commission, hereinafter referred to as the Commission, is an administrative agency created by the Shipping Act, 1916, and acts amendatory thereof and supplemental thereto.

The affirmative order of the United States Maritime Commission, hereinafter mentioned, was made in a proceeding instituted by the Commission, the matter involved in said proceeding arising in the Northern District of California, Southern Division.

## III

This petition invokes the jurisdiction of this honorable [fol. 55-3] court under, and such jurisdiction is based upon, the provisions of 28 U. S. Code, Section 41, Subd. 28, and of the Shipping Act, 1916, as amended, 46 U. S. Code, Section 830, which provide for actions to enjoin, set aside, annul or suspend, in whole or in part, the orders of the defendant Commission; and this petitioner further alleges that the jurisdiction of the Court depends upon the fact that this action arises under the constitution and laws of the United States of America; that the proceeding herein instituted is brought to suspend and set aside an order of the Commission, and the proceeding is brought in the judicial district wherein are the residences of the parties concerning whose acts the investigation, hearing and order of the Commission were made; and the district where the matters complained of in the proceeding before the Commission arise is in the jurisdiction of this honorable Court.

## IV

That on the 7th day of November, 1939, defendant Commission at a session held at its office in Washington, D. C., upon its own motion, made its order instituting the proceeding above mentioned; that said order initiated an investigation to determine whether the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of all or any of the respondents named in said order were in violation of Sections 15, 16, 17 and 20 of the Shipping Act, 1916 as amended; that your petitioner was named as one of the respondents in said proceeding; that thereafter hearings in said proceedings were held in the City and County of San Francisco on February 13 to 21, 1940, inclusive, and after continuances, on October 7 to 9, 1940, inclusive, on which last date the hearing was concluded and the matters before the Commission submitted on briefs to be filed subsequently.

[fol. 55-4] At the beginning of the hearing, and on said 13th day of February, 1940, your petitioner made a motion to dismiss the proceedings as against this petitioner, which motion was based on the grounds, first, that Congress could not constitutionally regulate the operations, including the rates, practices and other functions of this petitioner, in the carrying out of its governmental function of operating the municipal wharves of the City of Oakland; second, that Congress had not intended to include a municipal corporation within the definition of other persons subject to the act as defined in Section 1 of the Shipping Act, 1916; and, third, that Congress had not intended to regulate the rates as such of any wharfinger. Said motion was denied by the Examiner appointed by the Commission to conduct said hearing.

At the conclusion of the hearing and on the 9th day of October, 1940, petitioner again moved to dismiss the proceeding as to petitioner on the same grounds, and that said motion was again denied.

That thereafter your petitioner filed with said Commission its opening and closing briefs in which it urged not only all the points included within the motions to dismiss, but also all the other points hereinafter set forth as to which your petitioner alleges that said order of said Commission was unlawful.

That thereafter and on July 9, 1941 said proceeding was orally argued before the Commission at Washington, D. C., at which argument your petitioner appeared and in which it participated urging all of said points.

## V.

That thereafter and on the 11th day of September, 1941, said Commission made and filed its Order in said proceeding wherein and whereby it found, among other things:

[fol. 55-5] 1. That Congress had constitutional power to regulate the operations of this petitioner in the matter now carried on.

2. That your petitioner was within the definition of "other persons" as defined in Section 1 of the Shipping Act of 1916.

3. That your petitioner is required by Section 13 of the Shipping Act, 1916 to file with and have approved by the Commission a certain lease with Howard Terminal, one of the other respondents named in said proceeding, dated November 5, 1914, by which said Howard Terminal leased certain waterfront facilities from the City of Oakland.

4. That your petitioner is required by Section 15 of the Shipping Act, 1916 to file with and have approved by the Commission a certain agreement between the City of Oakland and McCormick Steamship Company, a common carrier by water, dated March 1, 1932, whereby said McCormick Steamship Company occupies certain waterfront facilities.

5. That your petitioner has failed in certain instances to give reasonable notice of tariff changes and prescribing a thirty (30) day prior notice in the future.

6. That the free time periods allowed by your petitioner for the removal of cargo from the facilities under its jurisdiction are unduly prejudicial and preferential in violation of Section 16, and unreasonable in violation of Section 17 of the Shipping Act, 1916 as amended, and that any such allowance greater than the period set forth in Table 1 attached to said Order which in general reduces such free time allowance from the existing ten (10) day period allowed by your petitioner to five (5) and seven (7) days will in the future be unduly prejudicial and preferential and unreasonable.



7. That your petitioner's rates, rules, regulations and [fol. 55-6] practices relating to wharf demurrage and wharf storage are non-compensatory resulting in unequal treatment of users and non-users of such services. That said rates, rules, regulations and practices are unduly prejudicial and preferential in violation of Section 16 and unreasonable in violation of Section 17 of the Shipping Act, 1916 as amended and that in the future the assessing and collecting of any charge for such wharf demurrage and wharf storage lower than the schedule of charges prescribed in said order would — unduly prejudicial and preferential and unreasonable. That the rates prescribed for such wharf storage by said Order are set forth in Exhibit 1 made a part hereof and attached hereto.

## VI.

That said proceeding was initiated by said Commission on its own motion by the Order of November 7, 1939 above referred to that said Order recited that it appeared that certain of the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of the respondents named therein, including your petitioner were unlawful. That thereafter and throughout the pendency of said hearings and in the matter of filing briefs and in the oral argument before the Commission above referred to said Commission at all times was represented by its attorney who examined and cross-examined witnesses, who filed briefs in said proceedings and who argued orally before the Commission on the points involved. That said hearings were conducted by the Chief Regulations Examiner of said Commission who is an officer of and who is under the direction of said Commission. That said Order is based solely on the opinion and factual testimony of one T. G. Differding, who was an expert especially employed by the Commission to aid it in said proceeding. That there is [fol. 55-7] no other testimony in the record of said proceeding upon which any order fixing the level of rates could be based. That by reason of the premises, the Commission in said proceeding acted as accuser, prosecutor, witness and Judge; that by reason thereof this petitioner was denied the fair hearing guaranteed it by the Constitution of the United States and that by reason thereof it was deprived of its property without due process of law.

## VII

That the lands upon which your petitioner carries on the activities complained of in said order of September 11, 1941 in their original state were tidelands and submerged lands belonging to the State of California by virtue of its sovereignty and conveyed by the State of California to the City of Oakland by Stats. of 1911, p. 1254, and Stats. of 1911, p. 1258, and statutes amendatory and supplemental thereto; that all of said statutes convey said lands to the City of Oakland in trust for the accommodation and promotion of commerce and navigation; that the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreement, acts, practices and operations of this petitioner which were considered in said proceeding by said Commission and which were made the subject of the order hereinbefore specified were promulgated and carried forward by said petitioner pursuant to the trusts imposed or created by said statutes and by the laws of the State of California and the charter of the City of Oakland; and your petitioner alleges that in connection with all of said matters it was engaged in the performance of a governmental function as a public agency and representative of the State of California; that there was no evidence adduced in any of said hearings to the contrary.

## VIII

That the Congress has and had no power to authorize the United States Maritime Commission to regulate this petitioner in the exercise of the powers vested in petitioner or in connection with any of the matters referred to in said order of said Commission of September 11, 1941 and particularly set forth hereinbefore.

## IX

That the Shipping Act, 1916, as amended, does not by its terms purport to apply, and does not apply, to petitioner.

## X

That by reason of the law and the facts established at said hearing before said Commission, the Commission has and had no jurisdiction of this petitioner, or of any of the matters or things investigated in said proceeding so far as they relate to petitioner and said order of September

11, 1941, so far as it relates to this petitioner, or to any of its activities, was and is erroneous and void and beyond the power of the United States Maritime Commission.

## XI

That said order is erroneous and void for each of the following reasons:

1. In that it did not grant the motion of this petitioner to dismiss the proceeding as to it;

2. In that it found and determined that United States Maritime Commission had and has jurisdiction of this petitioner;

3. In that it found and determined that Congress has constitutional power to regulate this petitioner in the ownership and operation of wharves;

4. In that it found and determined that Congress in enacting the Shipping Act of 1916, as amended, intended to and did give the United States Maritime Commission power to regulate this petitioner in the ownership and operation of a wharf;

5. In that it found and determined that this petitioner is [fol. 55-9] an "other person" as that term is defined in the Shipping Act, 1916;

6. In that it found and determined that Congress had empowered the Commission to regulate the rates as such of any wharfinger;

7. In that it found and determined that the lease between petitioner and Howard Terminal, dated November 5, 1914, and the agreement between petitioner and McCormick Steamship Company, dated March 1, 1932, are agreements within the purview of Section 16 of the Shipping Act, 1916;

8. In that it did not find or determine that the rates presently assessed and collected by this petitioner for the furnishing of wharf storage are sufficient to meet the out-of-pocket costs of such service;

9. In that it found and determined that the wharf storage rates presently assessed and collected by this petitioner are not compensatory;

10. In that it found and determined that the wharf storage rates presently assessed and collected by this petitioner must be compensatory.

## XII

That said affirmative Order of the Commission is erroneous and that it affirmatively appears that no study of the cost of furnishing wharf storage or of any of petitioner's operations, services, allowances or practices was made and that no evidence with respect thereto was introduced.

## XIII

That said affirmative Order of the Commission is erroneous in that it purports to require this petitioner to file with the Commission schedules showing all rates and charges for the furnishing of wharves, docks, warehouses and [fol. 55-10] other terminal facilities in connection with a common carrier by water. That said affirmative order of the Commission is erroneous in that it requires your petitioner to give at least thirty (30) days' prior written notice of tariff changes, contrary to law.

## XIV

That said Order is erroneous and without jurisdiction in that it assumes that Congress has empowered the Commission to render any order in connection with the rates of wharfingers in respect to the compensatory or non-compensatory character of such rates.

## XV

That said affirmative order is void and of no effect for the further reason that it violates Section 9 of Article I of the Constitution of the United States in that it is a regulation of commerce which gives preference to the Ports of the States of Washington and Oregon over the petitioner in two respects, namely, by prescribing higher wharf storage rates for this petitioner while permitting the Ports of the States of Washington and Oregon to maintain rates lower than those prescribed and by prescribing a shorter free time period for your petitioner than is permitted to remain in effect in such other ports. That such other ports in

the States of Washington and Oregon are in competition with this petitioner in connection with the trans-Pacific and intercoastal trades.

### XVI

That said affirmative Order is erroneous and void in that it directly deprives petitioner of its property without due or any process of law in violation of the fifth amendment to the Constitution of the United States and in this behalf petitioner alleges that compliance with said affirmative Order [fol. 55-11] will compel your petitioner to suffer irreparable loss as herein alleged during the continuance of the effectiveness of said Order.

### XVII

That said affirmative Order of the Commission is predicated upon a misapplication of the law to the facts and is erroneous and void and beyond the power of said Commission and is in violation of the law in such cases made and prescribed.

### XVIII

That your petitioner heretofore and on the 15th day of October, 1941 filed with said Commission its petition for reconsideration of said affirmative Order of September 11, 1941 but your petitioner is informed and believed that said Commission has not yet acted upon said petition and will not act thereupon until subsequent to the 27th day of October, 1941.

### XIX

That said affirmative Order compels this petitioner to comply therewith on or before October 27th, 1941 and to cease and desist from the doing of the things thereby prohibited and to observe the requirements and things thereby prescribed, all as hereinbefore particularly set forth, on or before said 27th day of October, 1941. Unless the enforcement, operation and execution of said Order is restrained and suspended during the course of this proceeding irreparable injury will result to this petitioner in that it will be compelled to move storage cargo from the space where it has been declared for storage to an off storage area or warehouse without being compensated therefor, and further in that the failure of this petitioner to comply with said



Order will subject petitioner to the severe penalties prescribed in the Shipping Act 1916 as amended pursuant to which each day constitutes a separate violation and is subject to a separate and exceedingly heavy penalty.

## XX

That by reason of the premises the petitioner has no plain, speedy, adequate or any remedy at law.

[fol. 55-13] Wherefore petitioner prays:

(a) That process in due form issue out of and under the seal of the Honorable Court, directed to defendants as required by law and that due and proper service of such process and of this petition be forthwith made by filing a copy thereof in the office of the Department of Justice of the United States and another copy in the office of the United States Maritime Commission pursuant to the provisions of Section 209 Judicial Code (Title 28 U. S. Code, Sec. 45) and thereafter the defendants and each of them be required on or before a date to be specified in the notice of process issued by this Court to appear herein and to answer this petition, but not under oath, answer under oath being hereby expressly waived.

(b) That as soon as practicable this Court convene a special statutory Court of three (3) judges as required by Title 28, U. S. Code, Sec. 47, and that a preliminary injunction be entered herein restraining, enjoining and suspending, until the further order of this Court the effect and enforcement of said affirmative order of September 11, 1941, until the further order of this Court.

(c) That inasmuch as the matter is urgent by reason of the fact that said affirmative order of the United States Maritime Commission requires the petitioners to comply therewith on or before October 27, 1941, the petitioners pray that pending the hearing upon the application for a preliminary or interlocutory injunction, a temporary restraining order be issued by this Honorable Court restraining, enjoining, and suspending the operation of the afore-said affirmative order until the said application for a preliminary or interlocutory injunction shall have been heard and determined.

(d) That after final hearing, this Court adjudge, order [fol. 55-14] and decree that the said affirmative order of the United States Maritime Commission is, and has at all times been beyond the lawful authority of the said Commission and wholly unlawful and void, and that the said affirmative order be perpetually set aside, suspended, cancelled and annulled and the enforcement thereof perpetually enjoined, insofar as it affects or relates to this petitioner.

(e) That your petitioner shall have such other and further relief in the premises as in equity and justice may appertain, and as may be deemed by this Honorable Court to be adequate and proper under the circumstances.

City of Oakland, a Municipal Corporation, Acting  
by and Through Its Board of Port Commissioners,  
by A. H. Abel, Port Manager.

Charles A. Beardsley, Port Attorney; W. Reginald Jones,  
Assistant Port Attorney, Attorneys for Petitioner.

---

[fol. 55-15] *Duly sworn to by A. H. Abel. Jurat omitted  
in printing.*

[fol. 55(16)]

## EXHIBIT 1.

Commodity (1)	Handling Charge (4)	Storage per 15-day period or Fraction (5)	Revenue for 30-day period (6)
Merchandise, N. O. S.	40	20	80
Ammonia, sulphate of	30	15	60
Apricot kernels	30	25	80
Beans, dried, in sacks <sup>1</sup>	15	12½	40
Canned goods, N. O. S. in cases, outbound	25	12½	50
Cotton	30	15	60
Cotton linters	30	20	70
Compound, viz., cleaning, scouring and wash- ing in pkgs.	15	12½	40
Fertilizers:			
Nitrate of soda, in sacks			
Potaash, in sacks			
Ammonia, phosphate, cyanamide, super- phosphate, urea	30	15	60
Fruit, dried, in bags or cases	30	15	60
Graint, N. O. S.	2½	12½	50
Hops, in bales	30	45	120
Iron and Steel, held in uncovered areas	20	10	40
Meal and meal cake (oil cake, sesame seed meal)	30	15	60
Peas, dried	15	12½	40
Pipe, iron and steel, held in uncovered areas	15	12½	40
Rice, in sacks	30	15	60
Scrap, iron or steel	15	10	35
Seed, mustard, hemp, or sesame	30	15	60
S hook	30	25	80
Sisal	50	17½	85
Soda ash, bags	30	15	60
Steel Sheets	15	10	35
Sugar	30	15	60
Tin Plate	15	10	35
Tires, pneumatic	50	75	200
Tomato, puree <sup>2</sup>	(2½¢ per case per season)		
Vehicles, motor, on wheels	50	125	300
Wool: In bales	30	30	90
In bags			
Veneer, wallboard	50	50	150

<sup>1</sup> Exception: When beans are held on wharf demurrage for period beyond which a total of \$1.00 per ton of 2000 pounds has been assessed within a season, no further charge will be made for that season. Under this provision "season" ends August 31st next.

<sup>2</sup> When season wharf demurrage rate is requested by shipper at time of delivery of merchandise to terminal, the rate for the season commencing on and after August 15th and ending March 1st next, is 2½ cents per case, payable in advance.

Note: Daily penalty rate proposed by California Commission. A charge of 5 cents per ton per day shall be assessed upon all cargo remaining beyond the free time period and not declared for storage, except that when cargo is not declared upon the expiration of the fifth day the demurrage rates set forth above (columns 4 and 5) shall thereafter apply.

[fol. 56] IN THE SOUTHERN DIVISION OF THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 22000-R

STATE OF CALIFORNIA and BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, Petitioners,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

No. 22002-L

CITY OF OAKLAND, a Municipal Corporation, Acting by and through its Board of Port Commissioners, Petitioner,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

No. 22005-R

STOCKTON PORT DISTRICT, a Public Corporation, Plaintiff,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

[fol. 57] ORDER CONSOLIDATING ACTIONS FOR TRIAL, PERMITTING INTERVENTION, AND GRANTING INTERLOCUTORY INJUNCTION—Filed November 10, 1941

The above entitled actions came on regularly to be heard on the 29th day of October, 1941, before the above entitled Court, Honorable Curtis D. Wilbur, Honorable Harold Louderback and Honorable Michael J. Roche sitting as a Statutory Three-Judge Court, on the applications and motions of the petitioners and plaintiffs in the above entitled actions, for an interlocutory injunction enjoining the carrying into effect and enforcing against said petitioners and plaintiffs of that certain affirmative order made and entered by the United States Maritime Commission, one of the defendants herein, on September 11, 1941, in that certain proceeding before said Commission designated "In the

Matter of Services, Rates, Tolls, Charges, Rentals, Rules, etc. of the San Francisco Bay Area Terminals," and numbered 555 on the docket of said Commission.

Said applications and motions having been consolidated for hearing by order of said Court, and evidence on said applications and motions having been presented and the verified petitions of said petitioners and plaintiffs, and the affidavits of J. F. Marias and A. H. Abel having been read and filed, and it appearing and the Court finds:

That due and legal notice of such applications and of this hearing has been given in the manner provided by law;

That, unless such interlocutory injunction be granted, irreparable damage will result to petitioners and plaintiffs herein and the other respondents in said proceeding before said Commission in the following respects:

That the enforcement of free time allowance or wharf demurrage and storage rates provided for in said order will result in requiring the charging by said petitioners and plaintiffs and other respondents in said proceeding, of higher wharf demurrage and storage rates than those now in effect in either the San Francisco Bay Area or the com-[fol. 58] petitor ports at Tacoma, Seattle, Portland, Long Beach and other competing ports on the Pacific Coast, without effecting any changes in free time or wharf demurrage and storage rates of such competing ports, on many commodities moving in heavy volume from trans-Pacific points to transcontinental destinations in the United States via Pacific Coast ports, and between the Pacific Coast and the Atlantic Coast, and will result in diversion of traffic to said other ports on the Pacific Coast from the ports of said petitioners and plaintiffs herein, and other respondents in said proceeding, thereby causing each and all of them to suffer loss of port revenues, which cannot be recouped, and which loss will be irreparable;

That the enforcement of such free time allowances and wharf demurrage and storage rates against respondents in said proceedings before said Commission, other than the above named petitioners and plaintiffs, but not against said petitioners and plaintiffs, will cause diversion of traffic from such other respondents and consequent loss of revenue resulting in their irreparable damage;

That the enforcement of such free time allowances and wharf demurrage and storage rates compels the imposition



of handling charges, under certain conditions, by petitioners, State of California and Board of State Harbor Commissioners for San Francisco Harbor, contrary to their established practice of not handling cargo in any manner whatsoever, which charges cannot be recouped and which will result in irreparable damage to said petitioners;

That the wharf storage rates currently assessed by petitioner, City of Oakland, are set forth in said petitioner's tariff; that said tariff is established by ordinance of the Board of Port Commissioners, in accordance with the requirements of Section 211 of the Oakland City Charter; that the passage of a new ordinance would be required to amend the existing tariff in relation to wharf storage charges; that such an ordinance cannot be passed before [fol. 59] the lapse of seven days; and

That if said petitioners or plaintiffs or other respondents in said proceeding before said Commission should fail to comply with the said order of said Commission, such failure will subject said parties and each of them to severe penalties as prescribed in the Shipping Act of 1916, as amended, pursuant to which Act each day constitutes a separate violation, and is subject to a separate and exceedingly severe penalty. The imposition of such penalties upon such petitioners would cause them irreparable financial loss and damage;

And the Court having heard the arguments of counsel for petitioners and plaintiffs, and defendants, and of Joseph J. Geary, Esquire, and of Chalmers G. Graham, Esquire, amici curiae, and being fully advised in the premises;

It is Hereby Ordered that the above entitled actions be and they are hereby consolidated for trial; that any of the respondents in said proceeding, Docket No. 555, before the United States Maritime Commission shall be entitled to intervene in said actions within sixty (60) days from the date of this order; and

It Is Further Ordered, Adjudged and Decreed that, pending, and until, the final hearing and final determination of the above entitled actions, the said defendants, United States of America and United States Maritime Commission, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, be and each of them is hereby

restrained and enjoined from carrying into effect or enforcing, directly or indirectly, in any respect or particular, that certain order made and issued on September 11, 1941, by the United States Maritime Commission in that certain proceeding before said Commission designated "In the [fol. 60] Matter of Services, Rates, Tolls, Charges, Rentals, Rules, etc. of the San Francisco Bay Area Terminals," and numbered 555 on the docket of said Commission, against any of the petitioners or plaintiffs in the above entitled actions and/or against any of the respondents in said proceeding before said Commission, and from requiring any of said petitioners and plaintiffs or respondents to carry out, obey, or observe in any respect or particular any of the terms, provisions, commandments, or conditions of said order of said Commission; and

That an interlocutory injunction in due form be issued accordingly.

Done in open court before this Statutory Three-Judge Court, convened pursuant to Title 28, Section 47, United States Code.

Dated at San Francisco, California, this 8 day of November, 1941.

Curtis D. Wilbur, United States Circuit Judge.

Michael J. Roche, United States District Judge.

Harold Louderback, United States District Judge.

Approved as to form as provided by Rule 22.

Frank J. Hennessy, United States Attorney; Esther B. Phillips, Assistant United States Attorney, Attorneys for Defendants, United States of America, and United States Maritime Commission.

[fol. 61] IN DISTRICT COURT OF THE UNITED STATES

No. 22000R

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION—Filed Dec. 19, 1941

Come now the United States of America and United States Maritime Commission defendants in the abovementioned

tioned cause, by Frank J. Hennessy, United States Attorney in and for the Northern District of California, Southern Division, and answer the allegations contained in the petition and bill for injunction of the petitioners as follows:

[fol. 62]

### I

Defendants admit the allegations of fact contained in paragraph I of the petition.

### II

Defendants admit the allegations of fact contained in paragraph II of the petition, except that they deny that the United States Maritime Commission was created by the Shipping Act, 1916; and allege that the Commission was created by the Merchant Marine Act, 1936.

### III

Defendants admit the allegations of fact contained in paragraph III of the petition.

### IV

Defendants admit the allegations of fact contained in paragraph IV of the petition, except that defendants deny that the petitioners reserved their objection to the jurisdiction of the Commission and did not in any manner waive the same, and allege that said petitioners appeared generally in the proceeding subject to the ruling of the examiner denying petitioners' motion to dismiss; and defendants deny that the petition sets forth accurately the motion made by the petitioners at the conclusion of the hearing, and allege that annexed hereto marked Exhibit A is a true copy of the original motion filed by the petitioners.

### V

Defendants deny the allegations contained in paragraph V of the petition, except that defendants admit that at the hearing in the proceeding referred to in the petition, there was evidence introduced with respect to the matters set forth in said paragraph V of the petition.

### VI

Defendants deny each and every allegation, conclusion of fact and conclusion of law contained in paragraphs VI, VII, VIII, IX, and X of the petition.

[fol. 63]

## VII

Defendants deny each and every allegation, conclusion of fact and conclusion of law contained in paragraph XI of the petition, except that the defendants admit that evidence was introduced at the hearing that it is necessary to charge so called penalty rates on wharf storage and demurrage on the wharves and piers of the petitioners in certain circumstances.

## VIII

Defendants deny each and every allegation, conclusion of fact and conclusion of law contained in paragraphs XII and XIII of the petition.

## IX

Defendants admit the allegations contained in paragraph XIV of the petition; and allege that the petition for reconsideration referred to in said paragraph XIV was denied by the Commission on or about the 24th day of October, 1941.

## X

Defendants deny the allegations contained in paragraphs XV, XVI and XVII of the petition.

## XI

Defendants deny the allegations contained in paragraph XVIII of the petition, except that defendants admit and allege that the order of the Commission made on the 11th day of September, 1941, requires the petitioners to comply therewith on or before October 27, 1941, and to cease and desist from the practices specified in said order.

Wherefore, defendants pray:

1. That the complaint herein be dismissed; and
2. That the defendants have and recover of the petitioners the proper costs of this suit.

Frank J. Hennessy, United States Attorney. Esther  
B. Phillips, Assistant United States Attorney.  
Carl F. Farbach, General Counsel, United States  
Maritime Commission, Of Counsel.

[fol. 64]

## EXHIBIT A

BEFORE THE UNITED STATES MARITIME COMMISSION

No. 555

In the Matter of services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of the San Francisco Bay area terminals named herein.

Special Appearance and Motion to Dismiss as to Respondents Board of State Harbor Commissioners for San Francisco Harbor and the State of California.

The State of California, made a respondent herein by the supplemental order of the United States Maritime Commission at a session thereof on February 3, 1940, and the Board of State Harbor Commissioners for San Francisco Harbor, made a respondent herein by the supplemental order of the United States Maritime Commission on November 30, 1939, under the name of Board of State Harbor Commissioners, Port of San Francisco, and specially appearing for the purpose of objecting to the jurisdiction of the United States Maritime Commission in this proceeding and investigation, move to dismiss the above entitled proceeding and investigation so far as it relates to said respondents or either of them, on the following grounds:

1. That the United States Maritime Commission has no jurisdiction of either of said respondents in this proceeding and investigation.

2. That the United States Maritime Commission has no jurisdiction of the subject of this proceeding and investigation so far as it relates to either of said respondents.

3. That there is no authority, statutory or otherwise, for such proceeding or investigation by the United States Maritime Commission so far as the same relates to any services, rates, charges, tolls, rentals, rules, regulations, classifications, [fol. 65] agreements, acts, practices, and/or operations of said respondents or either of them.

4. That the term "other persons subject to this act", as defined in Section 1 of the Shipping Act of 1916 as amended, does not include and does not apply to said respondents or either of them.



5. That the United States Maritime Commission is not authorized by the Shipping Act of 1916 as amended, or any other statute, and has no jurisdiction to inquire into or to investigate or to regulate any of the matters or things referred to or mentioned in the Shipping Act of 1916, and particularly in Sections 15, 16, 17 or 18 of said act, or in any other statute of the United States, so far as the same relate to or involve said respondents or either of them in the operation of the Port and Harbor of San Francisco or otherwise.

6. That the Congress of the United States has no power to regulate the State of California or the Board of State Harbor Commissioners for San Francisco Harbor in the operation of San Francisco Harbor or any of the property or facilities of said State or said Board used in connection with the operation of said harbor, or to regulate the fixing or collection of any rates or charges, or to make or enforce any rules, regulations, classifications, agreements, acts, practices and/or operations in connection with such operation.

7. That in establishing, constructing, maintaining and operating the Port and Harbor of San Francisco and all property and facilities used in connection therewith, including the fixing, adopting and collection of all rates and charges, and the making and enforcing of all rules, regulations, classifications, agreements, acts, practices and operations in connection with the operation of said port and harbor property and facilities, the State of California and the [fol. 66] Board of State Harbor Commissioners for San Francisco Harbor are acting in a governmental capacity and performing a governmental function, and, in so acting and performing such governmental function, are not subject to regulation by the Congress of the United States and are not subject to the jurisdiction of the United States Maritime Commission.

Wherefore, said respondents pray that this proceeding and investigation be dismissed as to them and each of them.

Earl Warren, Attorney General of the State of California.  
Lucas E. Kilkenny, Deputy Attorney General.  
Attorneys for said Respondents.

[fol. 66-1] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

No. 22002R

ANSWER OF THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION—Filed December 19, 1941

Come now the United States of America and the United States Maritime Commission, defendants in the above-mentioned cause, by Frank J. Hennessy, United States Attorney in and for the Northern District of California, Southern Division, and answer the allegations contained in the petition and bill for injunction of the petitioner as follows:

[fol. 66-2]

### I

Defendants admit the allegations of fact contained in paragraph I of the petition.

### II

Defendants admit the allegations of fact contained in paragraph II of the petition, except that they deny that the United States Maritime Commission was created by the Shipping Act, 1916; and allege that said Commission was created by the Merchant Marine Act, 1936.

### III

Defendants admit the allegations of fact contained in paragraph III of the petition.

### IV

Defendants admit the allegations of fact contained in paragraph IV of the petition, except that the defendants deny that the motions to dismiss the proceedings referred to in said paragraph IV were based upon all the grounds stated; and allege that the motion to dismiss was made on the ground that the Maritime Commission has no jurisdiction over a municipal corporation or a state agency, and that Congress has no constitutional power to regulate the governmental activities of such local body.

### V

Defendants deny the allegations contained in paragraph V of the petition except that the defendants admit that the

Maritime Commission made and filed its order in the proceeding referred to in the petition on the 11th day of September, 1941; and admit and allege that the Maritime Commission made the findings set forth in the Report of the Commission hereto annexed as Exhibit A and by reference thereto made a part hereof.

## VI

Defendants deny the allegations contained in paragraph VI of the petition, except that the defendants admit that said proceeding was initiated by the Maritime Commission on its own motion by the order of November 7, 1939, referred to in the petition and admit that said order recited that it appeared that certain of the services, rates, charges, [fol. 66-3] tolls, rentals, rules, regulations, classifications, agreements, acts, practices and obligations of the respondents named therein were unlawful; and admit that the Commission was represented by attorneys who examined and cross-examined witnesses, filed briefs in the proceeding and argued orally before the Commission on the points involved; and admit that said hearings were conducted by the Chief Regulations Examiner of the Commission, who is an officer of the Commission.

## VII

Answering paragraph VII of the petition, defendants deny that in connection with all the matters referred to in said paragraph the petitioner was engaged in the performance of a governmental function and deny that there was no evidence adduced in any of said hearings to the contrary. Defendants have no information or belief as to the remaining allegations contained in paragraph VII of the petition, and because of their lack of information and belief thereof defendants deny the allegations contained in paragraph VII of the petition except as specifically admitted herein.

## VIII

Defendants deny each and every allegation, conclusion of fact and conclusion of law contained in paragraphs VIII, IX, X, XI, XII, XIII, XIV, XV, XVI and XVII of the petition.

## IX

Defendants admit the allegations contained in paragraph XVIII of the petition; and allege that the petition for re-

consideration referred to in said paragraph XVIII was denied by the Commission on or about the 24th day of October 1941.

### X

Defendants deny the allegations contained in paragraph XIX of the petition, except that defendants admit that the order of the Commission made on the 11th day of September, 1941, requires the petitioner to comply therewith on or before October 27, 1941, and to cease and desist from the practices specified in said order.

### XI

Defendants deny the allegations contained in paragraph XX of the petition.

[fols. 66-4-66-5] Wherefore, defendants pray:

1. That the petition and bill for injunction herein be dismissed; and
2. That the defendants have and recover of the petitioner the proper costs of this suit.

Frank J. Hennessy, United States Attorney, Esther B. Phillips, Assistant United States Attorney.

Carl F. Farbach, General Counsel, United States Maritime Commission, of Counsel.

[fol. 67] IN DISTRICT COURT OF THE UNITED STATES

No. 22000-R, No. 22002-L, No. 22005-L

[Title omitted]

ORDER PERMITTING ENCINAL TERMINALS, A CORPORATION, TO INTERVENE AND BE TREATED AS A DEFENDANT IN THE ABOVE ENTITLED PROCEEDINGS—Filed January 6, 1942

[fol. 68] Encinal Terminals, a corporation, having presented to this Court a duly verified petition praying that it be allowed to intervene in the above entitled cause, and be treated as a defendant; and, it appearing from said petition

that the said Encinal Terminals has an interest in the matters involved, and more particularly a specific interest in upholding and sustaining the decision and order of the United States Maritime Commission, which is sought to be enjoined in these proceedings;

Now, Therefore, It Is Ordered that Encinal Terminals, a corporation, be, and it is hereby, permitted to intervene in the above entitled causes, and to be treated as a defendant therein.

Michael J. Roche, United States District Judge, in the Southern Division of the United States District Court, for the Northern District of California.

Dated at San Francisco, California, this 6th day of January, 1942.

---

[fol. 69] IN DISTRICT COURT OF THE UNITED STATES

No. 22000-R, No. 22002-L, No. 22005-L

[Title omitted]

[fol. 70] ANSWER OF INTERVENOR ENCINAL TERMINALS—Filed  
January 26, 1942

Comes now the Encinal Terminals, and, answering unto the allegations contained in the respective petitions and bills for injunction in the above proceedings, the intervenor, Encinal Terminals, answers as follows:

# I

The intervenor Encinal Terminals coincides with, and therefore accepts, the allegations contained in the answers filed in all of said proceedings on behalf of the United States of America and the United States Maritime Commission, except that with respect to the allegations contained in Paragraph VIII of the answer of the United States of America and the United States Maritime Commission to the petition of the Stockton Port District, the intervenor Encinal Terminals admits that the Port of Stockton is in



active competition with the terminals of the San Francisco Bay area for the movement of cargo over the terminal facilities.

Wherefore, the intervenor Encinal Terminals prays that the complaints and/or petitions on file in the above entitled proceedings be dismissed.

Lillick, Geary, Olson & Charles, Ira S. Lillick, Joseph J. Geary, Attorneys for Intervenor, Encinal Terminals.

[fol. 71] *Duly sworn to by H. E. Van Horn. Jurat omitted in printing.*

[fol. 72] IN DISTRICT COURT OF THE UNITED STATES

No. 22000-R, No. 22002-L, No. 22005-L

[Title omitted]

[fol. 73] ORDER PERMITTING PARR-RICHMOND TERMINAL CORPORATION, A CORPORATION, TO INTERVENE AND BE TREATED AS A DEFENDANT IN THE ABOVE ENTITLED PROCEEDINGS—  
Filed January 7, 1942

Parr-Richmond Terminal Corporation, a corporation, having presented to this court a duly verified petition praying that it be allowed to intervene in the above entitled causes, and be treated as a defendant, and it appearing from said petition that the said Parr-Richmond Terminal Corporation has an interest in the matters involved; and more particularly a specific interest in upholding and sustaining the decision and order of the United States Maritime Commission as applied to the publicly-owned terminals, which is sought to be enjoined in these proceedings; and further that said Parr-Richmond Terminal Corporation is one of the respondents in the proceeding before the United States Maritime Commission and, as such, is entitled to intervene herein pursuant to the order heretofore made herein under date of November 8, 1941.

Now, Therefore, It Is Ordered that Parr-Richmond Terminal Corporation, a corporation, be, and it is hereby per-

mitted to intervene in the above entitled causes, and to be treated as a defendant therein.

\_\_\_\_\_, United States District Judge, in the Southern Division of the United States District Court, for the Northern District of California.

Dated at San Francisco, California; this 7th day of January, 1942.

Curtis D. Wilbur (sgd. Circuit Judge.)

[fol. 74] IN DISTRICT COURT OF THE UNITED STATES

No. 22000-R, No. 22002-L, No. 22005-L

[Title omitted]

[fol. 75] ANSWER OF INTERVENER PARR-RICHMOND TERMINAL CORPORATION—Filed Jan. 23, 1942

Comes now Parr-Richmond Terminal Corporation, a corporation, intervenor in the above entitled proceedings, and, answering the respective petitions and bills and complaint on file herein, admits, denies and alleges as follows:

# I

Said intervenor hereby refers to and by this reference incorporates herein, to the same extent as if set forth in full herein, the admissions, denials and allegations in the answers heretofore filed in said proceedings on behalf of the United States of America and the United States Maritime Commission; except that said intervenor admits and alleges that said intervenor is in competition with other terminals located at other ports on the Pacific Coast; and except that said intervenor does not admit the reasonableness or validity of the order of the United States Maritime Commission under review in these proceedings with respect to any application of said order not herein under review.

Wherefore, intervenor Parr-Richmond Terminal Corporation prays that the petitions and bills and complaint on file in the above entitled proceedings be dismissed, and for

such other and further relief as may be meet and proper in the premises.

Morrison, Hohfeld, Foerster, Shuman & Clark; F. C. Hutchens, Attorneys for Intervener Parr-Richmond Terminal Corporation.

[fol. 76] *Duly sworn to by T. A. Goodrick. Jurat omitted in printing.*

[fol. 77] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

[fol. 78] ORDER PERMITTING HOWARD TERMINAL, A CORPORATION, TO INTERVENE AND BE TREATED AS A DEFENDANT IN THE ABOVE ENTITLED PROCEEDINGS—Filed January 7, 1942

Howard Terminal, a corporation, having presented to this Court a duly verified petition praying that it be allowed to intervene in the above entitled causes, and be treated as a defendant, and, it appearing from said petition that the said Howard Terminal has an interest in the matters involved, and more particularly a specific interest in upholding and sustaining the decision and order of the United States Maritime Commission, which is sought to be enjoined in these proceedings:

Now, Therefore, It Is Ordered that Howard Terminal, a corporation, be, and it is hereby, permitted to intervene in the above entitled causes, and to be treated as a defendant therein.

Curtis D. Wilbur, Circuit Judge, United States District Judge, in the Southern Division of the United States District Court, for the Northern District of California.

Dated at San Francisco, California, this 7th day of January, 1942.

[fol. 79] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

[fol. 80] ANSWER OF INTERVENOR HOWARD TERMINAL—Filed  
January 28, 1942

Comes now the Howard Terminal, and answering unto the allegations contained in the respective petitions and bills for injunction in the above proceedings, the intervenor Howard Terminal answers as follows:

I

The intervenor Howard Terminal coincides with, and therefore accepts and adopts as its own, the allegation contained in the answers filed in all of said proceedings on behalf of the United States of America and the United States Maritime Commission, except that with respect to the allegation contained in Paragraph VIII of the answer of the United States of America and the United States Maritime Commission, to the petition of the Stockton Port District, the Intervenor Howard Terminal alleges that the Port of Stockton is in active competition with the terminals of the San Francisco Bay area for the movement of cargo over the terminal facilities.

Wherefore, the intervenor, Howard Terminal, prays that the complaints and/or petitions on file in the above entitled proceedings be dismissed.

Graham & Morse, Attorneys for Intervenor Howard Terminal.

---

[fol. 81] *Duly sworn to by C. P. Howard. Jurat omitted in printing.*

[fol. 82] IN UNITED STATES DISTRICT COURT

No. 22005-R. Civil

STOCKTON PORT DISTRICT etc.

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME  
COMMISSION

ORDER DISMISSING CAUSE—February 26, 1942

Pursuant to a stipulation of dismissal heretofore filed herein, It Is Ordered that this cause be and the same is hereby dismissed.

[fol. 83] IN UNITED STATES DISTRICT COURT

[Title omitted]

MINUTE ENTRY OF TRIAL—February 26, 1942

These two (2) above entitled causes heretofore consolidated for trial came on this day for trial; Lucas E. Kilkenny, Esq., appearing as attorney for the State of California and Board of State Harbor Commissioners for San Francisco Harbor; W. Reginald Jones, Esq., appearing as attorney for the City of Oakland, etc.; Esther B. Phillips, Assistant United States Attorney, appearing as attorney for the defendants; Joseph J. Geary, Esq., appearing as attorney for Encinal Terminals, Intervenor; F. C. Hutchens, Esq., appearing as attorney for Parr-Richmond Terminal Corporation, Intervenor; and Robert Mackenzie, Esq., appearing as attorney for Howard Terminals, Intervenor. On motion of Miss Esther B. Phillips it is ordered that Carl F. Farbach, Esq., General Counsel for the United States Maritime Commission, be and he is hereby admitted to practice as an attorney, counsellor, solicitor, proctor and advocate of this Court only for the purpose of prosecuting these two cases, and thereupon said Carl F. Farbach, Esq., took the oath of attorneys as prescribed by the rules of this Court. Mr. Kilkenny, Mr. Jones, Mr. Geary and Mr. Farbach made statements to the Court. Mr. Kilkenny introduced in evidence certified copies of orders, [fol. 84] etc., re Docket No. 555, United States Maritime



Commission, which were marked Petitioners' Exhibit No. 1. Mr. Kilkenny introduced in evidence eleven volumes consisting of 1904 pages of transcript of proceedings Re Docket No. 555, United States Maritime Commission, which were marked Petitioners' Exhibit No. 2. All of the parties having stipulated that all exhibits introduced before the United States Maritime Commission, Mr. Kilkenny introduced in evidence 172 original exhibits introduced on the hearing re Docket No. 555, United States Maritime Commission, which said exhibits were marked Petitioners' Exhibit No. 3. Thereupon all parties hereto stipulated that Exhibit No. 3 may be duplicated under the direction of the Clerk of this Court, and that when the duplicates are so prepared they shall be substituted in evidence for the original exhibits and that the original exhibits shall then be returned to Carl F. Farbach, Esq., General Counsel for the United States Maritime Commission. Further ordered that the expenses for preparing duplicates of Petitioners' Exhibit No. 3 shall be paid for by the State of California and the City of Oakland. By consent it is ordered that the petition of the State of California et al. be amended on the face thereof by inserting after the word "is" in the fifth line of Paragraph I, page 2 of the complaint, the words "and at all times mentioned herein was". It was further stipulated between the petitioners and the United States Maritime Commission that the form of the motion to dismiss which is mentioned in Paragraph IV on page 4 of the petition is incorrectly stated there, and that the correct form of the motion is as shown in Exhibit A of the answer of the United States of America and the United States Maritime Commission. After hearing the attorneys for the respective parties, it is ordered that each of the petitioners have twenty (20) days within which to file their opening briefs herein, that the defendants and interveners each have twenty (20) days to file their briefs herein, and that each of the petitioners have fifteen (15) days within which to file their briefs in reply.

Further ordered that the further trial hereof be continued to April 27, 1942. On motion of Mr. Jones and by consent of all the attorneys for the respective parties hereto, it is ordered that the interlocutory injunction heretofore issued herein remain in full force and effect until the further order of the Court.

[fol. 86] IN UNITED STATES DISTRICT COURT

[Title omitted]

MINUTE ENTRY OF TRIAL—May 21, 1942

These two (2) causes heretofore consolidated for trial came on this day for further trial; Lucas E. Kilkenny, Esq., Deputy Attorney General of the State of California appeared as attorney for the State of California and Board of Harbor Commissioners for San Francisco Harbor; W. Reginald Jones, Esq., Port Attorney, appeared as attorney for the City of Oakland, etc.; Carl F. Farbach, Esq., Special Counsel for the United States Maritime Commission, and Miss Esther B. Phillips, Assistant United States Attorney, appeared as attorneys for the defendants; Joseph A. Geary, Esq., appeared as attorney for Encinal Terminals, an Intervenor; R. D. Mackenzie, Esq., appeared as attorney for Howard Terminals, an Intervenor; and F. C. Hutchens, Esq., appeared as attorney for Parr-Richmond Terminal Corporation, an Intervenor. After argument by Mr. Farbach, Mr. Kilkenny and Mr. Jones, it is ordered that these two (2) cases be and the same are hereby submitted to the Court for consideration and decision.

[fol. 87] IN DISTRICT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 22000-R

STATE OF CALIFORNIA and BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, Petitioners,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

No. 22002-L

CITY OF OAKLAND, a Municipal Corporation, Acting by and though its Board of Port Commissioners, Petitioner,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

Before: Healy, Circuit Judge; St. Sure and Roche, District Judges

OPINION—Filed Aug. 20, 1942

HEALY, Circuit Judge:

Following its investigation of certain practices of the petitioners and eighteen other terminals in the San Francisco Bay area, the United States Maritime Commission made an order which the petitioners here seek to enjoin.<sup>1</sup> [fol. 88] Petitioners' suits have been consolidated, and a three-judge court assembled pursuant to 28 U. S. C. A. § 47.

The Maritime Commission's hearing was conducted before a trial examiner who made recommendations later put into effect by the order. The Commission found that there is a lack of uniformity in the rules and practices of the terminals in the Bay area in regard to free-time allowance, and that the manner in which they are applied affords opportunity for unequal treatment of shippers; also, that

---

<sup>1</sup> The Commission's order is reported in 2 U. S. M. C. 588. Petitioners' suits are brought pursuant to 46 U. S. C. A. § 830 and 28 U. S. C. A. § 46.

such rules and practices are unduly prejudicial and preferential in violation of § 16, and unreasonable in violation of § 17 of the Shipping Act, 1916, as amended.<sup>2</sup> It found further that the regulations and practices in respect of demurrage and storage charges are lacking in uniformity, and that, as a whole, the terminals are furnishing wharf storage services at non-compensatory rates, resulting in the unequal treatment of users and nonusers of such services; likewise, that these rules and practices are in violation of §§ 16 and 17 of the Act.

[fol. 89] As defined by the Commission, free time is the period allowed for the assembling of cargo upon, or its removal from the wharves. Wharf demurrage is the charge accruing on cargo left in possession of the terminal beyond the free-time period. Demurrage is a penalty charge designed to force the cargo off the wharves and thereby clear them for other traffic. In lieu of demurrage, or upon the expiration of the demurrage period, a storage charge may be assessed at a lower rate. As a remedy for the existing abuses, the Commission prescribed a table of free-time periods, the terminals being ordered to abstain from allowing

---

<sup>2</sup> Section 16, 46 U. S. C. A. § 815, provides in part: "It shall be unlawful for any common carrier by water, or other person subject to this chapter, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 17, 46 U. S. C. A. § 816, provides in part: "Every such carrier and every other person subject to this chapter shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

longer periods than those prescribed.<sup>3</sup> As to demurrage and storage, it prescribed: (a) a penalty charge of 5¢ per ton per day upon cargo remaining beyond the free-time period and not declared for storage, with the further provision that when cargo is not declared for storage by the [fol. 90] fifth day it shall automatically go into storage; (b) a storage charge, varying with different commodities, and based on a fifteen-day period or fraction thereof; and (c) a handling charge, likewise varying with different commodities, to be assessed when cargo goes into storage. The terminals were ordered to abstain from assessing demurrage and storage charges at less than the prescribed rates, but the order was without prejudice to the establishment of higher rates when they were justified and it did not require the reduction of any higher rates then in effect. There was a further requirement that the terminals file with the Commission and keep open to public inspection, schedules showing all the rates and charges for the furnishing of wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The rates and regulations imposed appear to be identical with those prescribed by the California State Railroad Commission for private terminals in the Bay area.<sup>4</sup> The latter order grew out of the State Commission's investigation, commenced in 1935, of the "chaotic" conditions prevailing in the terminals. The major problems, said the State body,

---

<sup>3</sup> The table of prescribed free-time periods, exclusive of Sundays and holidays, is as follows:

	In-bound Days	Out-bound Days
Coastwise and Inland Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transshipment	10	10

This schedule is without prejudice to a longer period, not in excess of 21 days, on petroleum or products thereof, destined to trans-Pacific ports; and without prejudice to the establishment of reasonable rules and regulations in connection with free-time allowances.

<sup>4</sup> Decision No. 29,171, Case No. 4090, Railroad Commission of the State of California (1936).

were "the inadequacies of the revenues of the terminal operators, the diversion of tonnage through absorptions, and the existence of discriminatory rates between various [fols. 91-92] users of the services." A study of terminal operations and revenues was made by agents of the State Commission and the results were set out in a preliminary and a final report, referred to as the Edwards-Differding reports. Based upon their analysis of the cost of rendering the various services, and considering also such factors as competition between terminals and the ability of the traffic to pay, Edwards and Differding recommended the rates and regulations subsequently adopted. Their studies did not extend to the State and municipal terminals, since the State Commission has no jurisdiction over them; and, owing to competitive conditions, the State Commission's order was expressly conditioned upon the voluntary adoption of similar measures by the publicly owned terminals. It appears that all of the terminals, both public and private, have adopted the recommendations of the State Commission as to toll, dockage, and service charges, but not those relating to free time, demurrage, and storage. The Edwards-Differding reports were admitted as evidence in the proceeding before the Maritime Commission, and there was also testimony by Differding. It is conceded that these reports form the basis of the order here under attack.

Both petitioners are public agencies. The members of the Board of State Harbor Commissioners for San Francisco Harbor are appointed by the governor. The function of the Board is to provide the facilities for handling freight and passengers on the San Francisco waterfront. It controls the piers and wharves, all of which are owned by the State, and it operates the Belt-Line terminal railroad. The board assigns pier space to the various steamship lines, giving them a preferential use of the piers, for which it charges a rental.<sup>5</sup> It also collects dockage on vessels and tolls on cargo, as well as demurrage and storage charges. All revenues from handling, loading, and accessorial services are collected and retained by the assignees. The Board is not authorized to engage in warehousing, nor is it authorized to make a profit from its

<sup>5</sup> Two of the piers are assigned to private operators, namely, Golden Gate Terminals and State Terminal Company.



operations. It is, however, required to collect sufficient revenue to enable it to perform its duties and pay the principal and interest on its bonds.<sup>6</sup>

Oakland, a municipal corporation, operates several terminals directly, and others it leases to private operators. The facilities are managed and the rates fixed by the Board of Port Commissioners of the Port of Oakland. Deficits in operation are made up by taxation.<sup>6a</sup>

1. Little attention need be given the first argument advanced by the petitioners, namely, that their terminal operations are sovereign or governmental in character, hence are constitutionally immune from Federal control. We do not inquire whether the functions performed are governmental or proprietary, for in either event they are subordinate to the power of Congress to regulate interstate commerce. *United States v. California*, 297 U. S. 175.<sup>7</sup> The petitioners contend that since they do not actually handle the cargo which passes through the terminals they are not engaged in "commerce." But their terminal activities bear immediately and substantially upon the flow of goods in interstate and foreign commerce, and it is immaterial that they are not themselves engaged in commerce, as such, or that their activities may be wholly intrastate, *United States v. Darby*, 312 U. S. 100, 118; *United States v. Wrightwood Dairy Company*, 315 U. S. 110, 121.

2. The provisions of §§ 16 and 17 of the Act apply to a common carrier by water or "other person subject to this chapter." The latter phrase is defined in § 1, 38 U. S. C. A. § 801, as meaning "any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water." The same section further states that "the term 'person' includes corporations, partnerships, and as-

<sup>6</sup> Sections 3080 and 3084, Harbors and Navigation Code of California (1937).

<sup>6a</sup> Success of the terminal operations of Oakland is measured by the industrial development of the city.

<sup>7</sup> See also *Parkersburg & Ohio River Transportation Company v. Parkersburg*, 107 U. S. 691, 701; *State of California v. Anglim*, 9 Cir., — F. 2d —.

sociations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country."

The major contention advanced appears to be that the Shipping Act of 1916 does not apply to the petitioners in that neither of them is a "person" as that term is defined [fol. 95] in the Act. Various reasons are marshaled in support of the contention. It is said that since Congress was at pains to specify the particular entities embraced by the term "person," it must have intended to exclude those not mentioned; that it is a canon of construction that a sovereign is presumptively not bound by its own statute unless specifically named in it; that petitioners are not to be classed as "other persons" subject to the Act for the reason that they are not "carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water," more specifically, that they are not carrying on a business, and that, assuming they are, it is not in connection with a common carrier by water.

It is plain that the statutory enumeration of the entities falling within the term "person" is not exclusive, and was not intended to be so. If it were otherwise, the curious result would follow that even an individual is not a "person" within the intentment of the Act. In *Georgia v. Evans*, — U. S. —, decided April 27, 1942, the court held that the term "person," as similarly defined in the Sherman Act, includes a state. The court observed that whether the word "person" or "corporation" includes a state "depends upon its legislative environment." Congress knew that a substantial proportion of the wharfinger service of the country is provided by public agencies. The salutary purpose [fol. 96] intended to be effected by the Shipping Act would largely be defeated if it were to be held that such agencies are outside the scope of the legislation, as witness the dilemma of the California State Railroad Commission in its attempt to deal with the terminal problem in the Bay area. Moreover, resort to the legislative history of the Act affords some evidence that it was the intent of Congress to make public terminals subject to regulation.\* As to the

---

\* During the discussions in the Committee of the Whole House on H. R. 15455, which later became the Shipping Act, reference was made to the fact that large sums of money

canon of construction relied on, the Supreme Court in *United States v. California*, supra, observed that "the presumption is an aid to consistent construction of the statutes of the enacting sovereign when their purpose is in doubt, but it does not require that the aim of the statute fairly to be inferred be disregarded because not explicitly stated." The State of California is not, incidentally, the enacting sovereign in this instance.

It would hardly be consonant with good sense to believe that the petitioners are not in the "business" of furnishing terminal facilities merely because, as is argued, the govern-[fol. 97] ing statute forbids or does not contemplate that they make a profit. The phrase "carrying on business" has not so narrow a connotation as that. Indeed, the State law is in disagreement with the contention insofar as it is made by the Board of State Harbor Commissioners. Section 1731 of the Harbors and Navigation Code of California (1937) provides that the president of the Board "shall supervise the conduct of the dock system, the State Belt Railway and all other departments of the harbor business." And see *Denning v. State*, 123 California 316, 321, in which the California Supreme Court observed that the Board is authorized to conduct the "business of wharfinger." It is equally plain that the business of petitioners is conducted "in connection with a common carrier by water." It is inadmissible to suppose that this phrase limits the definition of "other persons" to those whose operations form part of the act of water transportation, for the result would follow that no persons are affected other than common carriers by water. We need not labor the point. The statutory verbiage seems clear enough as it stands. The petitioners

---

had been invested in municipal docks by such cities as New York, Seattle, San Francisco, and Los Angeles, and the question was asked whether it was the intention of the bill to take away the control of these municipal wharves from the cities which had constructed them. To this question the chairman of the Committee on the Merchant Marine and Fisheries (the committee in charge of the bill) made the following reply: "Not at all; only to prevent unjust discrimination between shippers. If they do exercise such discrimination, there is no reason why they should not be amenable to the law as well as a private person." 53 Cong. Rec. 8276.

are plainly within the definition of those furnishing terminal facilities in connection with common carriers by water.

3. We turn to the contention that the order exceeds the authority conferred upon the Commission by §§ 16 and 17.

The order, insofar as it relates to free time, is clearly valid. The allowance of free time is a "regulation or practice" [fol. 98] "within the contemplation of § 17, and the petitioners do not attack as unreasonable the maximum free-time periods fixed. The periods prescribed are substantially the same as those already in effect on the San Francisco waterfront; and Oakland's assistant port manager testified that they are reasonable and proper. All parties agree that the question of free time is tied in with the need to keep the transit sheds clear for the purpose of cargo movement. Moreover, lack of uniformity in the practices of particular terminals in regard to extensions of the free-time period results in the giving of undue preferences and advantages, in violation of § 16."

But the power of the Commission to establish minimum wharfage rates stands on a somewhat different footing. The Commission disavows authority to fix the rates of the petitioners. What it does lay claim to is the authority and the responsibility of preventing discriminatory and unreasonable practices, and it says that it is "not to be deterred by the incidental effect of its action upon rates." In a sense, the whole problem may be said to grow out of the uncontrolled practices regarding free time. There can be no question but that the furnishing of storage at nominal rates, [fol. 99] upon the expiration of the free-time period, amounts substantially to an extension of the free time.<sup>8a</sup>

<sup>8a</sup> In its findings the Commission states: "Under the stress of competition, most of the larger terminals, in cases of emergencies, extend the free time either to cover the additional number of days of delay to the vessel, or, in the case of Oakland, to such number of days as is warranted and equitable in each individual case, according to the judgment of the Port Manager."

<sup>8b</sup> The Commission found that, while the demurrage rates of the San Francisco Board are designed to, and do, accomplish the purpose of clearing the piers for intransit cargo, nevertheless, in order to be competitive, the Board provides a lower "bulkhead" storage rate for cargo not occupying essential transit space.

The difference is merely one of degree. It is difficult to see how the discriminatory and unreasonable practices found to be existent can be corrected unless the terminals are ordered to put a platform beneath the charges imposed where goods are left beyond the free-time period. Cf. *Merchants Warehouse Co. v. United States*, 283 U. S. 501, 513. The rates, approved, it should be remembered, were expressly found to be not in excess of cost.

Under § 16, the Commission has power to prevent discrimination between shippers "in any respect whatsoever," and this power has been held to extend to matters of rate discrimination. *Compagnie Generale Transatlantique v. American Tobacco Co.*, 2 Cir., 31 F. 2d 663, 666, cert. denied 280 U. S. 555; *Booth SS Co. v. United States* (D. C. N. Y.), 29 F. Supp. 221. But the present order does not stop with the requirement that all shippers who leave their goods on the wharves beyond free time shall be charged demurrage and storage at uniform rates; it goes further and prescribes the level below which those rates are not to fall. The discrimination said to justify the order is not between shippers who avail themselves of the storage services; it is between the users and nonusers of the service. As the report of the Commission states "the users of the wharf [fol. 100] storage services are not providing their proper share of essential terminal revenues," and "a disproportionate share of this burden is being passed to users of other terminal services." The Commission further observed that "the practice of furnishing one service below cost has the tendency to prevent any downward revision of rates for other services however justified they may be."

Section 16 of the Shipping Act is substantially identical with § 3(1) of the Interstate Commerce Act,<sup>9</sup> 49 U. S. C. A. § 3(1), which has been held applicable to rate discrimination of the same character as that involved here. In *Ex Parte No. 104*, Part VI, *Warehousing and Storage of Property by Carriers at the Port of New York*, 198 I. C. C. 134, 216 I. C. C. 291, and 220 I. C. C. 102, the Interstate Commerce Commission held that the practice of certain railroads in furnishing storage to shippers at non-compensatory rates results in undue prejudice to those shippers whose commercial practices do not permit of their placing

<sup>9</sup> Cf. *United States v. Tozer*, 29 F. 904, 906.



their goods in storage, but require direct shipment from shipside to destination. The prejudice was found to extend to "all persons who are compelled to bear the carrier's transportation rates which are dissipated by their storage practices." 216 I. C. C. 291, 351. This administrative decision, involving § 3(1) of the Interstate Commerce Act, was upheld in *Baltimore & Ohio Railroad Company v. United States*, 305 U. S. 507, substantially on the grounds advanced by the Interstate Commerce Commission [fol. 101]. While the case involved other sections of the Act as well as § 3(1), the holding appears to be that the former section, standing alone, would support the Commission's order. The important matter to be noted is that the discrimination discussed by the Supreme Court did not result from the failure of the railroads to treat all shippers alike, but from the fact that certain shippers were not in a position to take advantage of the non-compensatory warehousing service.

While we have considered we have not discussed all the arguments made by the petitioners in respect of the point, and we think it unnecessary to do so. For reasons already given we are of opinion that the order of the Commission in respect of minimum wharfage charges has support in § 16 of the Shipping Act, if not in § 17.

4. The Edwards-Differding studies did not extend to the petitioners' operations, but the record supports the inference that the petitioners' costs were not substantially less than the costs of other terminals in the Bay area. The studies did include the Howard, Encinal, and Parr-Richmond terminals in the East Bay area, as well as the two privately operated piers on the San Francisco Waterfront, namely, Golden Gate Terminals and State Terminal Company. The rates recommended by the experts and adopted by the Commission were based on the lowest unit costs, both fixed and operating, of the terminals studied; and there is testimony that such costs have increased since the investigation. Under these circumstances, and in view of petitioners' failure to introduce any evidence tending to show [fol. 102] that their costs were lower than those prevailing at the other terminals, we think the Commission was justified in concluding that the minimum rates prescribed were not above the petitioners' cost of rendering the service.



Oakland complains that the Commission should have considered ~~only~~ the out-of-pocket expenses incident to the rendition of the service, and should not have included, as it did, the fixed cost of providing floor space. But we believe that the determination of the proper cost basis should be left to the discretion of the Commission. Certainly we can not say that the formula adopted by it is unreasonable. Cf. *Swayne & Hoyt Ltd. v. United States*, 300 U. S. 297, 304; *Virginia Ry. Company v. United States*, 272 U. S. 658, 663.

5. The Board claims that the order is in conflict with § 9, Article I, of the Constitution, which provides that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." Since the rates in certain of the Pacific Northwest ports are somewhat lower than those prescribed for the Bay area terminals, the order is said to bestow an unlawful preference on those ports. We note again, in passing, that the Maritime Commission's order is substantially identical with the order of the State's own regulatory body. Moreover, the conditions in the other ports are not shown to be the same. It is enough to say that the order does not affect the rates and practices of any terminal outside the [fol. 103] Bay area. As said in *Pennsylvania v. Wheeling & Belmont Bridge*, 18 Howard 421, 435, "what is forbidden is, not discrimination between individual ports within the same or different states, but discrimination between states." There is no discrimination of that character here.

Another contention is that the order is invalid for the reason that it gives an undue preference or advantage to the Northwest as a "locality," within the phraseology of § 16 of the Shipping Act. But the statute obviously refers to discrimination between shippers. (The rates and regulations prescribed by the order are uniformly applicable to all localities which seek the use of petitioners' terminal facilities.)

We find that the Maritime Commission had lawful authority to make its regulatory order, and that the same is valid. It is therefore ordered that petitioners' motion for a permanent injunction be denied and the proceedings dismissed, upon preparation of findings of fact and conclusions of law. Petitioners will pay costs.

William Healy, United States Circuit Judge; A. F. St. Sure, United States District Judge; Michael J. Roche, United States District Judge.

[fol. 104] IN DISTRICT COURT OF THE UNITED STATES:

No. 22000-R, No. 22002-L

[Title omitted]

**EXCEPTIONS AND OBJECTIONS AND PROPOSED AMENDMENTS TO  
DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed November 7, 1942**

[fol. 105] Come now petitioners State of California and Board of State Harbor Commissioners for San Francisco Harbor, said Board being hereinafter referred to as "the Harbor Board", by their attorneys, Earl Warren, Attorney General of the State of California, and Lucas E. Kilkenny, Deputy Attorney General of said State, and except and object to and propose the following amendments to defendants' proposed findings of fact and conclusions of law, heretofore lodged with the Clerk of this Court, the references in said amendments being to proposed findings of fact and conclusions of law by numbers and pages as follows:

**I**

Strike out introductory paragraphs one and two, consisting of the last three lines on page 1 and the first twenty lines on page 2 of said proposed findings of fact and conclusions of law, to which said petitioners hereby except, and substitute therefor the following:

"This cause came on regularly for hearing on the 26th day of February, 1942, before the above entitled Court, consisting of the Honorable William Healy, Circuit Judge, and the Honorable A. F. St. Sure and the Honorable Michael J. Roche, District Judges, Earl Warren, Attorney General of the State of California, and Lucas E. Kilkenny, Deputy Attorney General, appearing for petitioners State of California and Board of State Harbor Commissioners for San Francisco Harbor, and Frank J. Hennessy, United States Attorney, and Esther B. Phillips, Assistant United States Attorney, and Carl F. Farbach, General Counsel, United States Maritime Commission, appearing for defendants, and documentary evidence consisting of a certified copy of the record before the United [fol. 106] States Maritime Commission, Docket No.

555 on the records of said Commission, was offered and received in evidence, and the matter was argued and submitted for decision, and the Court being fully advised in the premises, now makes the following

### Findings of Fact

#### I

The above entitled proceedings was and is brought pursuant to Section 31 of the Shipping Act, 1915, as amended (39 Stat. 738, c. 451, Sec. 31; 46 U. S. Code, Sec. 830), 28 U. S. Code, Sec. 41, subd. (28), and Title 28, U. S. Code, Secs. 43-48, inclusive, to enjoin, set aside, annul and suspend, so far as it relates to the above named petitioners, a certain affirmative order of defendant United States Maritime Commission made and entered on the 11th day of September, 1941, in a proceeding before said Commission designated "In the Matter of Services, Rates, Charges, Tolls, Rentals, Rules, Regulations, Classifications, Agreements, Acts, Practices, and Operations of the San Francisco Bay Area Terminals Named Herein" and numbered 555 on the Docket of said Commission, requiring the above named petitioners (among others) to cease and desist from allowing greater periods of free time than those prescribed by said order, and from publishing, demanding or collecting wharf, demurrage and storage rates less than the minimum rates found by said Commission in said order to be reasonable, and requiring said petitioners (among others) to file with the Commission and to keep open to public inspection schedules and charges for the furnishing of wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water."

#### II

Strike out in their entirety proposed findings of fact numbered I, III, V to XV, inclusive, pages 2-5, and XVII, page 6, of said proposed findings of fact, to each of which said petitioners hereby except, and substitute therefor the following findings of fact to be numbered and worded as follows:

## "II

The State of California, one of the above named petitioners herein, is and at all times mentioned in the above entitled proceeding was one of the States of the United States of America, and the Board of State Harbor Commissioners for San Francisco Harbor, one of the above named petitioners herein, hereinafter referred to as the Harbor Board, is and at all of said times was a duly constituted agency of the State government of said State of California performing certain functions and having certain powers in behalf of said State in respect of San Francisco Harbor, including the activities of the State referred to in the aforesaid proceeding before the United States Maritime Commission (hereinafter called "the Commission").

## III

Defendant Commission is an administrative body [fol. 108] created by the Merchant Marine Act, 1936, and the affirmative order of said Commission hereinafter mentioned was made in a proceeding instituted by the Commission, the matter involved in such proceeding arising within the Northern District of California, Southern Division.

## IV

All of the allegations contained in Paragraphs III and IV of the petition of said petitioners are true excepting that the "Special Appearance and Motion to Dismiss as to Respondents Board of State Harbor Commissioners for San Francisco Harbor and the State of California", referred to in said Paragraph IV, was in words and figures as alleged in Paragraph IV of the answer of said defendants and as set forth in a copy of said special appearance and motion, marked Exhibit "A" and attached to said answer.

## V

At all times mentioned in said petition and in the proceedings before the Commission referred to in Paragraph I of these findings of fact, petitioner State of California, acting by and through petitioner Harbor Board, in the construction, maintenance and administration of San Francisco Harbor, was engaged and

now is engaged in the performance of purely governmental functions and at all of said times was not and now is not engaged in any kind of business whatsoever, and there was no evidence to the contrary at the hearing in said proceeding before the Commission.

[fol. 109]

## VI

There was no evidence at said hearing before the Commission that either of the above named petitioners was at any of the times mentioned or inquired into at said hearing or is now carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water, or otherwise, or that either of said petitioners was at any of said times or now is carrying on any business whatsoever.

## VII

The Congress of the United States has and had no power to authorize the United States Maritime Commission to regulate either of the said petitioners in the exercise of any of the powers vested in the Harbor Board, or in making or adopting or enforcing regulations as to the amount of free time to be allowed for the assembling of cargo upon, or its removal from, the wharves and piers of petitioner State of California, or in the matter of giving notice of tariff charges, or of fixing and collecting wharf demurrage or storage charges on cargo left upon said wharves and piers beyond the free time allowed, or in regulating any of the practices or activities whatsoever of either of said petitioners in relation to the said wharves and piers of petitioner State of California on the San Francisco waterfront or in San Francisco Harbor.

[fol. 110]

## VIII

The Shipping Act of 1916, as amended, does not by its terms purport to apply and does not apply to petitioner State of California or petitioner Board of State Harbor Commissioners for San Francisco Harbor.

## IX

Neither of said petitioners herein is an "other person subject to this act" within the meaning of Section 1 of the Shipping Act of 1916, as amended.



## X

The activities of said petitioners and each of them affected by said order of the Commission do not bear immediately and/or substantially upon the flow of goods in interstate and foreign commerce through the Harbor of San Francisco or otherwise.

## XI

Neither of said petitioners has at any time failed to give reasonable notice of changes in rates for the services and facilities furnished by them.

## XII

Any notice of change in rates for services and facilities given by said petitioners or any failure to give notice of such changes is not an unreasonable practice within the meaning of Section 17 of the Shipping Act of 1916, as amended.

## XIII

The respective periods of free time set forth in Table I of the order and report of the Commission are [fol. 111] unreasonable and improper.

## XIV

The rules, regulations and practices of the said petitioners and each of them with respect to free time, insofar as they permit free time allowances greater than those set forth in the above mentioned Table I, exclusive of Sundays and holidays, are not unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act of 1916, as amended, and are not unreasonable regulations and practices within the meaning of Section 17 of said act.

## XV

Any lack of uniformity in the free time rules, regulations and practices of the petitioners in the above entitled proceeding and/or of the respondents in said proceeding before the Commission and/or in the application thereof and/or in the manner in which they are

applied does not discriminate between or give unequal treatment to shippers; and said rules, regulations and practices are not in this or any other respect unduly prejudicial or preferential within the meaning of Section 16 of the Shipping Act, 1916, as amended, and are not unreasonable regulations and practices within the meaning of Section 17 of said act.

## XVI

The rates, rules, regulations and/or practices of petitioners above named and/or of the respondents in the above mentioned proceeding before said Commission relating to wharf demurrage and wharf storage [fol. 112] are not, by reason of lack of uniformity or otherwise, unduly preferential and/or prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, and/or unreasonable regulations and practices within the meaning of Section 17 of said act.

## XVII

There was no evidence that, at any of the times referred to in the said hearing before the Commission, the rates of petitioners above named were producing revenues which were or are substantially less than the cost of the service and/or that said rates were or are not compensatory.

## XVIII

The rates of the above named petitioners for wharf demurrage and wharf storage services at all of the times referred to in the said proceeding before said Commission produced revenues which were sufficient to pay the cost of the service, and such rates were and are compensatory.

## XIX

There was no evidence at said hearing before the Commission that the rates for wharf demurrage and wharf storage service of the above named petitioners were such that users of such service were at any time not providing their proper share of essential terminal revenues; and there was no evidence at said hearing that the granting of such rates by said petitioners

resulted in a disproportionate share of the burden of providing such revenues being shifted to users of other [fol. 113] terminal service and/or in unequal treatment of users and non-users of wharf storage and wharf demurrage services.

## XX

As a result of the rates of the above named petitioners for wharf demurrage and wharf storage services, users of such services have been providing their proper share of essential terminal revenues; and the granting of such rates by said petitioners has not resulted in a disproportionate share of the burden of providing such revenues being shifted to users of other terminal services and/or in unequal treatment of users and non-users of wharf storage and wharf demurrage services.

## XXI

The granting of wharf storage and wharf demurrage services at non-compensatory rates is not unduly preferential or prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, and is not an unreasonable practice within the meaning of Section 17 of said act.

## XXII

There was no evidence at said hearing before the Commission that the respective minimum rates for wharf demurrage and wharf storage prescribed by the Commission in its order are not in excess of the cost of the service to the above named petitioners or either of them.

## XXIII

The said affirmative order of said Commission is [fol. 114] void and of no effect for the reason that it violates Section 9 of Article I of the United States Constitution in that it is a regulation of commerce which gives preference to the ports of the States of Washington and Oregon, to-wit, Seattle and Portland, over the San Francisco Harbor in two respects, namely, by prescribing higher wharf storage rates for the above named petitioners and said Harbor while permitting such other ports to maintain lower rates than those

prescribed, and by prescribing a shorter free time period for the above named petitioners and said Harbor than is permitted to remain in effect in such other ports. Such other ports in the States of Washington and Oregon are in competition with said petitioners and Harbor in connection with the trans-Pacific and inter-coastal trades.

#### XXIV

The above named petitioners, on the 17th day of October, 1941, filed with the United States Maritime Commission their petition for reconsideration of its said affirmative order of September 11, 1941, and said petition for reconsideration was denied by the Commission on or about the 24th day of October, 1941.


#### XXV

The evidence before the Commission at the said proceeding before it does not sustain the findings of the Commission as set forth in the report of the Commission in said proceeding (2 U. S. M. C. 586) or any of said findings."

[fol. 115]

#### III

Strike out in their entirety said defendant's proposed conclusions of law numbered (1) to (8) and IX, inclusive, pages 6 and 7, to all of which said petitioners hereby except and object, and substitute therefor the following:

"As Conclusions of Law from the Foregoing Findings of Fact, the Court Concludes: 

#### I

Neither of the above named petitioners is an "other person subject to this act" as defined in or within the meaning of Section 1 of the Shipping Act of 1916, as amended.

#### II.

Neither of said petitioners is, or at any time mentioned in the above entitled proceeding was, subject to the power of Congress to regulate interstate and foreign commerce (Constitution, Art. I, Sec. 8, Cl. 3) in respect of the activities affected by the order of the Commission, or otherwise.

## III

Neither of said petitioners is, or at any time mentioned in the above entitled proceeding was, subject to the jurisdiction of the United States Maritime Commission under the Shipping Act of 1916, as amended, in respect of the activities affected by the order of the Commission, or otherwise.

## IV

The said affirmative order of the Commission given and made on September 11, 1941, in the proceeding numbered Docket 555 on its records and files is a regulation of commerce which gives preference to the Port of Seattle in the State of Washington and the Port of Portland in the State of Oregon over the Harbor and Port of San Francisco in the State of California in the respects mentioned in Paragraph XIII of said petitioners' petition herein, in violation of Section 9 of Article I of the Constitution of the United States.

## V

The Shipping Act of 1916, as amended, does not by its terms purport to apply and does not apply to petitioner State of California or petitioner Board of State Harbor Commissioners for San Francisco Harbor.

## VI

The said order of the Commission in said proceeding is not sustained by the findings of the Commission nor by the evidence of record before the Commission in said proceeding before it.

## VII

The Commission did not have any lawful authority to issue its said order in the said proceeding, and said order is invalid and unlawful in all respects and void as to the above named petitioners.

Said above named petitioners are entitled to a final decree in the above entitled proceeding ordering, adjudging and decreeing that the said affirmative order



[fol. 117] of the United States Maritime Commission dated September 11, 1941, is, and has at all times been, beyond the lawful authority of the said Commission and was and is wholly unlawful and void, and that the said affirmative order be perpetually set aside, suspended, cancelled and annulled and the enforcement thereof perpetually enjoined, insofar as it affects or relates to either of the above named petitioners.

It is ordered that a final decree be entered accordingly."

Wherefore, said petitioners pray that said exceptions and objections and said proposed amendments be allowed and approved.

Dated: November 7, 1942.

Respectfully submitted, Earl Warren, Attorney General of the State of California. Lucas E. Kilkenny, Deputy Attorney General, Attorneys for said Petitioners.

Due service and receipt of a copy of the within Exceptions and Objections and Proposed Amendments to Defendants' Proposed Findings of Fact and Conclusions of Law admitted this 7th day of November, 1942.

Frank J. Hennessy, United States Attorney. Esther B. Phillips, Assistant United States Attorney. Carl F. Farbach, Attorneys for Defendants.

Copy received 11/7/42.

LEK:H  
11-6-42

[fol. 118] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

No. 22000-R

No. 22002-L

**Findings of Fact and Conclusions of Law**—Filed November 16, 1942

This cause is brought pursuant to the provisions of Section 47, Title 28 U. S. C. A., and Section 830, Title 46 U. S. C. A., to enjoin, set aside, and annul an order of [fol. 119] the United States Maritime Commission, entered in a proceeding before said Commission entitled "In the Matter of Services, Rates, Charges, Tolls, Rentals, Rules, Regulations, Classifications, Agreements, Acts, Practices, and Operations of the San Francisco Bay Area Terminals Named Herein", being Docket No. 555 in the records of said Commission, requiring the petitioners (among others) to cease and desist from certain practices relating to or connected with the receiving, handling, storing and delivering of property, and found by said Commission to be unduly preferential and prejudicial and unreasonable, in violation of the Shipping Act, 1916, as amended, and prescribing and ordering enforced certain regulations and practices with respect thereto.

This cause came on regularly for hearing on the 26th day of February, 1942, before the above entitled Court, consisting of the Honorable William Healy, Circuit Judge, and the Honorable A. J. St. Sure and Michael J. Roche, District Judges, and documentary evidence, consisting of a certified copy of the record before the United States Maritime Commission in the aforesaid proceeding, was received, and the matter was argued and submitted. The Court being advised in the premises, now makes the following

**FINDINGS OF FACT**

**I**

The petitioner, the State of California, is one of the states of the United States, and the petitioner, Board of State Harbor Commissioners for San Francisco Harbor (herein called the "Harbor Board") is an agency of the State of

California, performing certain powers and functions in behalf of the State in respect of San Francisco Harbor, including the activities of the State referred to in the aforesaid proceeding before the United States Maritime Commission (herein called the "Commission").

## II

The City of Oakland is a municipal corporation of the State of California.

[fol. 120]

## III

The petitioners, the State of California and the Harbor Board, are and at all times referred to in the petition herein and in the aforesaid proceeding were, and each of them is and at all times referred to in the petitions herein and in said proceeding was, carrying on the business of furnishing wharfage, dock, warehouse, and other terminal facilities in connection with a common carrier by water as defined in the Shipping Act, 1916, as amended.

## IV

The petitioner, the City of Oakland, is, and at all times referred to in the petition herein and in the aforesaid proceeding was, carrying on the business of furnishing wharfage, dock, warehouse, and other terminal facilities in connection with a common carrier by water as defined in the Shipping Act, 1916, as amended.

## V

The activities of the petitioners, and each of them, affected by the order of the Commission, bear immediately and substantially upon the flow of goods in interstate and foreign commerce.

## VI

The evidence before the Commission in the aforesaid proceeding, fully sustains the findings of the Commission, as set forth in the report of the Commission in said proceeding (2 U. S. M. C. 588).

## VII

The petitioners herein have, and each of them has, failed to give reasonable notice of changes in rates for the services

and facilities furnished by them; and such failure to give adequate notice of tariff changes is an unreasonable practice within the meaning of Section 17 of the Shipping Act, 1916, as amended.

### VIII

The respective periods of free time set forth in Table 1 in [fol. 121] the report of the Commission as follows:

	Inbound days	Outbound days
Coastwise and Inland		
Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transshipment	10	10

are reasonable and proper.

### IX

The rules, regulations and practices of the petitioners, and each of them, with respect to free time, are, insofar as they permit free time allowance greater than those set forth in the aforesaid Table 1, exclusive of Sundays and holidays, unduly preferential and prejudicial within the meaning of the Section 16 of the Shipping Act, 1916, as amended, and unreasonable regulations and practices within the meaning of Section 17 of that Act.

### X

There is lack of uniformity in the free time rules, regulations and practices of the petitioners and in the application thereof; and the manner in which they are applied affords opportunity to discriminate between, and for unequal treatment of, shippers. Said rules, regulations, and practices are in this respect unduly prejudicial and preferential within the meaning of Section 16 of the Shipping Act, 1916, as amended, and unreasonable regulation and practices within the meaning of Section 17 of that Act.

### XI

The rates, rules, regulations, and practices of the petitioners, and each of them, relating to wharf demurrage and wharf storage are lacking in uniformity. Said rates,

rules, regulations, and practices are in this respect unduly prejudicial and preferential within the meaning of Section 16 of the Shipping Act, 1916, as amended, and unreasonable regulations and practices within the meaning of Section 17 of that Act.

[fol. 122]

## XII

The rates of the petitioners for wharf demurrage and wharf storage services, at the times referred to in the aforesaid proceedings before the Commission, were producing revenues which are substantially less than the cost of the service, and are not compensatory.

## XIII

As a result of the non-compensatory rates for wharf demurrage and wharf storage service, users of such service have not been providing their proper share of essential terminal revenues. The granting of wharf storage and wharf demurrage services at non-compensatory rates results in a disproportionate share of the burden of providing such revenues being shifted to users of other terminal services and in unequal treatment of users and non-users of wharf storage and wharf demurrage services.

## XIV

The granting of wharf storage or wharf demurrage services at non-compensatory rates is unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, and an unreasonable practice within the meaning of Section 17 of that Act.

## XV

The respective minimum rates for wharf demurrage and wharf storage prescribed by the Commission in its order are not in excess of the cost of the service to the petitioners, or any of them.

## XVI

The agreement between the City of Oakland and Howard Terminal, dated November 5, 1914, and the agreement between the City of Oakland and McCormick Steamship Company, dated March 1, 1932, are agreements controlling,

regulating, preventing and destroying competition and providing for an exclusive, preferential or co-operate working arrangement. Said agreements have not been approved by [fol. 123] the Commission; and the petitioner City of Oakland is and has been carrying out said agreements before (and without) approval thereof by the Commission.

## XVII

No preference is given by the order of the Commission to any port over any other ports.

### CONCLUSIONS OF LAW

(1) Each of the petitioners is an "other person subject to this Act," as defined in the Shipping Act, 1916, as amended.

(2) The petitioners are, and each of them is, subject to the power of Congress to regulate interstate and foreign commerce (Const., Art. I, Sec. 8, cl. 3), in respect of the activities affected by the order of the Commission.

(3) The petitioners are, and each of them is, subject to the jurisdiction of the United States Maritime Commission under the Shipping Act, 1916, as amended, in respect of the activities affected by the order of the Commission.

(4) The proceedings before the Commission and the rules of procedure governing those proceedings are in full accord with all the requirements of due process of law.

(5) No preference is given by the order of the Commission to the ports of one state over those of any other state.

(6) The agreement between the City of Oakland and Howard Terminal, dated November 5, 1914, and the agreement between the City of Oakland and McCormick Steamship Company, dated March 1, 1932, are within the purview of Section 15 of the Shipping Act, 1916, as amended, and are required by that Section to be filed with the Commission.

(7) The order of the Commission in the aforesaid proceeding is fully sustained by the findings of the Commission and by the evidence of record before the Commission in said proceeding.

(8) The Commission had lawful authority to issue its said order in the aforesaid proceeding, and said order is valid [fol. 124] and lawful in all respects.



## IX

The petitioners' motion for a permanent injunction is denied and these proceedings are dismissed, petitioners to pay costs.

William Healy, United States Circuit Judge; A. F. St. Sure, United States District Judge; Michael J. Roche, United States District Judge.

[fol. 125] IN DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVI-  
SION

No. 22000-R

STATE OF CALIFORNIA and BOARD OF STATE HARBOR COMMIS-  
SIONERS FOR SAN FRANCISCO HARBOR, Petitioners,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME  
COMMISSION, Defendants

FINAL DECREE—Filed December 1, 1942

The above-entitled matter came on regularly for hearing on the 26th day of February, 1942, before the above-entitled Court, the Honorable William Healy, United States Circuit Judge, the Honorable A. F. St. Sure and the Honorable Michael J. Roche, United States District Judges, sitting as a statutory three-judge Court, and it appearing that said cause had been consolidated for trial and hearing by order duly made, with case entitled "City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Petitioner, vs. United States of America and United States Maritime Commission, Defendants, Encinal Terminals, a corporation, Parr-Richmond Terminal, a corporation, and Howard Terminal, a corpora-  
[fol. 126] tion, Interveners, No. 22002-L." and documentary evidence having been received for the consideration of all matters appearing in the petition and bill for injunction herein of the above-named petitioner and the law and the facts having been orally argued, and briefs having been filed, and the case having been submitted, and the Court having made findings of fact and rendered conclusions of

law, and having determined that the orders of the United States Maritime Commission, referred to in the petition and bill for injunction herein, are fully sustained by the findings of the Commission, and by the evidence of record herein, and that said Maritime Commission had lawful authority to issue the orders complained of, and the Court having held that said orders are and were valid and lawful in all respects, it is hereby

Ordered, Adjudged and Decreed that the temporary injunction heretofore entered is hereby dissolved and that the motion for a permanent injunction is hereby denied, and that these proceedings are dismissed with costs in favor of the defendants as may be taxed.

Done in open court before this statutory three-judge Court, convened pursuant to Section 47, Title 28 United States Code.

Dated: December 1st, 1942.

William Healy, United States Circuit Judge; A. F. St. Sure, United States District Judge; Michael J. Roche, United States District Judge.

[fol. 126-a] IN DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 22002-R

CITY OF OAKLAND, a Municipal Corporation, acting by and through its Board of Port Commissioners, Petitioner,

vs.

UNITED STATES OF AMERICA and UNITED STATES MARITIME COMMISSION, Defendants

ENCINAL TERMINALS, a Corporation, PARR-RICHMOND TERMINAL, a Corporation, and HOWARD TERMINAL, a Corporation, Interveners

FINAL DECREE—Filed December 1, 1942

The above-entitled matter came on regularly for hearing on the 26th day of February, 1942, before the above-entitled Court, the Honorable William Healy, United States Cir-

cuit Judge, the Honorable A. F. St. Sure and the Honorable Michael J. Roche, United States District Judges, sitting as a statutory three-judge court, and it appearing that said cause had been consolidated for trial and hearing by order duly made, with case entitled "State of California and Board of State Harbor Commissioners for San Francisco Harbor, Petitioners, vs. United States of America and United States Maritime Commission, Defendants, No. [fol. 126-b] 22000-R" and documentary evidence having been received for the consideration of all matters appearing in the petition and bill for injunction herein of the above-named petitioner and the law and the facts having been orally argued, and briefs having been filed, and the case having been submitted, and the Court having made findings of fact and rendered conclusions of law, and having determined that the orders of the United States Maritime Commission, referred to in the petition and bill for injunction herein, are fully sustained by the findings of the Commission, and by the evidence of record herein, and that said Maritime Commission had lawful authority to issue the orders complained of, and the Court having held that said orders are and were valid and lawful in all respects, it is hereby

Ordered, Adjudged and Decreed that the temporary injunction heretofore entered is hereby dissolved and that the motion for a permanent injunction is hereby denied, and that these proceedings are dismissed with costs in favor of the defendants as may be taxed.

Done in open court before this statutory three-judge Court, convened pursuant to Section 47, Title 28 United States Code

Dated: December 1st, 1942

William Healy, United States Circuit Judge; A. F. St. Sure, United States District Judge; Michael J. Roche, United States District Judge.

[fol. 127] IN DISTRICT COURT OF THE UNITED STATES

No. 22000-R

[Title omitted]

**Petition for Appeal, Assignment of Errors, and Prayer  
for Reversal—Filed December 31, 1942**

This is a suit to annul and enjoin an order of the United States Maritime Commission seeking to regulate under the Shipping Act of 1916, as amended, wharf demurrage and storage charges and free time on state owned and conducted wharves of appellants. The suit involves also the questions whether appellants are subject to said act and whether Congress had power to enact it. A statutory three-judge court constituted pursuant to section 47, Title 28, and section 830, Title 46, United States Code, granted an interlocutory injunction and at a final hearing entered a final decree denying relief and dismissing the petition.

Considering themselves aggrieved by the final judgment and decree of the District Court of the United States for the Northern District of California, Southern Division, specially constituted and convened pursuant to the provisions of section 47 of Title 28, United States Code, and Section 830 of Title 46, United States Code, in the above [fol. 128] entitled cause, the petitioners herein, State of California and Board of State Harbor Commissioners for San Francisco Harbor, hereby pray that an appeal be allowed from said final judgment and decree to the Supreme Court of the United States and for an order fixing the amount of the cost bond on appeal therein.

**ASSIGNMENT OF ERRORS**

Said petitioners herein assign the following errors in the record and proceedings in said case:

The District Court of the United States for the Northern District of California, Southern Division, erred in the following particulars:

1. The Court erred in making and entering its final decree denying the permanent injunction applied and prayed for by petitioners above named, and in dismissing the proceedings in said case.

2. The Court erred in refusing to make and enter its decree vacating and annulling and permanently enjoining the order of the United States Maritime Commission issued and made on September 11, 1941.

3. The Court erred in finding and concluding that each of said petitioners is an "other person subject to this Act" as defined in the Shipping Act of 1916, as amended.

4. The Court erred in finding and concluding that said petitioners and each of them is subject to the power of Congress to regulate interstate and foreign commerce (Const., Art. I, Sec. 8, Cl. 3) in respect to the activities affected by the order of the Commission.

5. The Court erred in finding and concluding that said petitioners and each of them is subject to the jurisdiction of the United States Maritime Commission under the Shipping Act of 1916, as amended, in respect of the activities affected by the order of the said Commission of September 11, 1941.

[fol. 129] 6. The Court erred in finding and concluding that no preference is given by said order of the United States Maritime Commission to the ports of one State over those of any other State.

7. The Court erred in finding and concluding that the said order of the United States Maritime Commission in the proceeding in which it was made and issued was sustained by the findings of the said Commission and by the evidence of record before the said Commission in said proceeding.

8. The Court erred in finding that the rules, regulations and practices of said petitioners, and each of them, with respect to free time, are, insofar as they permit free time allowance greater than those set forth in its findings, exclusive of Sundays and holidays, unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, and unreasonable regulations and practices within the meaning of Section 17 of that Act.

9. The Court erred in finding that the rates, rules, regulations and practices of said petitioners and each of them, because not uniform with those of the other respondents in the proceedings before said Commission in Docket 555,

are, in respect of such lack of uniformity, unduly prejudicial and preferential within the meaning of Section 16 of the Shipping Act of 1916, as amended, and unreasonable regulations and practices within the meaning of Section 17 of that Act.

10. The Court erred in finding that the rates of said petitioners for wharf demurrage and wharf storage services, at the time referred to in said proceedings before the Commission, were producing revenues which are substantially less than the cost of the service, and are not compensatory.

11. The Court erred in finding that the granting of wharf storage or wharf demurrage services at non-compensatory [fol. 130] rates is unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act of 1916, as amended, and an unreasonable practice within the meaning of Section 17 of that Act.

12. The Court erred in finding and concluding that said Commission had lawful authority to issue its said order in the proceeding before it in Docket 555 and that said order is valid and lawful in all respects.

13. The Court erred in not finding and concluding that the Shipping Act of 1916, as amended, does not by its terms purport to apply and does not apply to petitioner State of California or to petitioner Board of State Harbor Commissioners for San Francisco Harbor.

14. The Court erred in not finding that at all times mentioned in said petition and in the proceedings before the said Commission, petitioner State of California, acting by and through petitioner Harbor Board, in the construction, maintenance and administration of San Francisco Harbor, was engaged and now is engaged in the performance of purely governmental functions and at all of said times was not and now is not engaged in any kind of business whatsoever, and there was no evidence to the contrary at the hearing in said proceeding before the Commission.

15. The Court erred in not finding that there was no evidence at said hearing before the Commission that either of the above named petitioners was at any of the times mentioned or inquired into at said hearing or is now carry-



ing on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water, or otherwise, or that either of said petitioners was at any of said times or now is carrying on any business whatsoever.

[fol. 131]

PRAYER FOR REVERSAL

For which errors petitioners and appellants, State of California and Board of State Harbor Commissioners for San Francisco Harbor, pray that the said final decree of the District Court of the United States for the Northern District of California, Southern Division, made and entered on December 1, 1942, in the above entitled cause, be reversed, and that said Court be ordered to enter a decree in favor of said petitioners and appellants, and for costs.

Dated: December 31, 1942.

Earl Warren, Attorney General, State of California;  
Lucas E. Kilkenny, Deputy Attorney General.  
Attorneys for said Petitioners and Appellants:

[fol. 132] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

No. 22000-R

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF COST  
BOND ON APPEAL—Filed December 31, 1942

The petitioners and appellants in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the final decree made and entered in the above entitled suit by the District Court of the United States for the Northern District of California, Southern Division, on the 1st day of December, 1942, and from each and every part thereof, and having presented and filed their petition for appeal, as [fol. 133] signment of errors, and prayer for reversal, pursuant to the statutes and rules of the United States in such case made and provided;

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States

from the final decree of the District Court of the United States for the Northern District of California, Southern Division, made and entered on December 1, 1942, in the above entitled cause, as provided by law, and it is further ordered that the Clerk of said District Court shall prepare and certify a transcript of the record, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States; so that he shall have the same in said Court within sixty (60) days of this date.

And it is further ordered that petitioners and appellants furnish a bond to secure costs on said appeal and that the amount of said bond be and hereby is fixed in the sum of \$500.00 Five hundred dollars.

Dated: December 31, 1942.

William Healy, United States Circuit Judge; —  
 —, United States District Judge, — —,  
 United States District Judge.

[fols. 134-174] Citation in usual form showing service on Charles Fahy, et al., omitted in printing.

[fols. 175-179] Bond on appeal for \$500.00 approved and filed Dec. 31, 1942, omitted in printing.

[fol. 180] IN DISTRICT COURT OF THE UNITED STATES

No. 22000-R

[Title omitted]

STIPULATION AND ORDER AS TO RECORD ON APPEAL—Filed  
 February 17, 1943

It is hereby stipulated by and between petitioners and appellants above named, and defendants and appellees and interveners and appellees above named, that there shall be included and incorporated in the transcript of record in this cause on appeal to the United States Supreme Court the following papers, documents, testimony and exhibits:

1. Petition and Bill for Injunction, and attached exhibits.
2. Order Consolidating Actions for Trial, Permitting Intervention and Granting Interlocutory Injunction.

[fol. 181] 3. Answer of the United States of America and United States Maritime Commission, and attached exhibits.

4. Order Permitting Encinal Terminals, a corporation, to Intervene and be treated as a Defendant.

5. Answer of Intervener Encinal Terminals.

6. Order Permitting Howard Terminal, a corporation, to intervene and be treated as a Defendant.

7. Answer of Intervener Howard Terminal.

8. Order Permitting Parr-Richmond Terminal Corporation, a corporation, to intervene and be treated as a Defendant.

9. Answer of Intervener Parr-Richmond Terminal Corporation.

10. Opinion of Statutory Three-Judge Court.

11. Findings of Fact and Conclusions of Law.

12. Exceptions and Objections and Proposed Amendments to Defendants' Proposed Findings of Fact and Conclusions of Law.

13. Final Decree of Statutory Three-Judge Court.

14. Petition for Appeal, Assignment of Errors, and Prayer for Reversal.

15. Order Allowing Appeal and Fixing Amount of Cost Bond on Appeal.

16. Citation with Proof of Service.

17. Statement as to Jurisdiction on Appeal.

18. Notices of Service of Documents on Appellees and Proof of Service.

19. Notice of Appeal to Defendants and Interveners with Proof of Service.

20. Acknowledgment of Attorney General of State of California of Notice of Appeal.

21. Bond upon Appeal.

22. Minutes of the Court of February 26, 1942, and May 21, 1942.

23. This Stipulation and Order as to Record on Appeal.

24. Clerk's Certificate.

[fol. 182] And it is further stipulated that, pursuant to Section 210, Judicial Code, and Title 28, Section 47a, United States Code, in addition to the papers and documents hereinabove stipulated to be included in the transcript of record on appeal in said cause, the original record of the proceedings had in the trial court in the above entitled cause before

the statutory three-judge court be transmitted by the Clerk of this court to the Clerk of the United States Supreme Court on this appeal, instead of a transcript thereof or of a narrative statement of evidence pursuant to Equity Rule 75, which said original record consists of the following papers, documents, testimony and exhibits introduced in evidence at the trial as follows: (1) Petitioners' Exhibit No. 1, consisting of certified copies of orders and other documents re Docket No. 555 before the United States Maritime Commission; (2) Petitioners' Exhibit No. 2, consisting of a certified copy of 1904 pages of testimony taken in the proceedings in Docket No. 555 before the United States Maritime Commission; (3) Petitioners' Exhibit No. 3, consisting of duplicate copies of one hundred seventy-two (172) original exhibits introduced at the hearings in Docket No. 555 before the United States Maritime Commission, which said duplicate copies of exhibits were substituted for the original exhibits, by order of the statutory three-judge court.

Dated: February 17, 1943.

Robert W. Kenny, Attorney General of the State of California; Lucas E. Kilkenny, Deputy Attorney General. Attorneys for Petitioners and Appellants. [fol. 183] lants. Frank J. Hennessy, United States Attorney; Esther B. Phillips, Assistant United States Attorney; Carl F. Farbach, Special Counsel, United States Maritime Commission; Attorneys for United States of America, and United States Maritime Commission, Defendants and Appellees. Lillick, Geary, Olson & Charles, Ira S. Lillick, Joseph J. Geary, Attorneys for Encinal Terminals, Intervener and Appellee. Graham & Morse, Attorneys for Howard Terminal, Intervener and Appellee. Morrison, Hohfeld, Foerster, Shuman & Clark, F. C. Hutchens, Attorneys for Parr-Richmond Terminal Corporation, Intervener and Appellee.

---

[fol. 184] ORDER FOR TRANSMITTAL OF ORIGINAL RECORD AND EXHIBITS TO THE UNITED STATES SUPREME COURT, ON APPEAL

Whereas, the above entitled cause was consolidated for trial and was tried in this Court with the case entitled, City

of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Petitioner, vs. United States of America and United States Maritime Commission, Defendants, Encinal Terminals, a corporation, Howard Terminal, a corporation, and Parr-Richmond Terminal Corporation, Interveners, No. 22002-L, and

Whereas, the same evidence was introduced and the same proceedings had, in all respects, in the trial of both of said causes; and said causes are of like nature and are relative to similar and closely related questions,

Now, Therefore, pursuant to Section 210, Judicial Code; and Title 28, Section 47a, United States Code, and in conformity with and pursuant to the foregoing stipulation,

It Is Ordered and Directed by the above entitled Court, acting and sitting as a Statutory Three-Judge Court, that, in addition to the papers and documents specified and enumerated in Items 1 to 24, inclusive, of the foregoing stipulation, the original record of the proceedings at the trial of the above entitled cause before this Court on February 26, 1942, and May 21, 1942, be transmitted by the Clerk of this Court to the United States Supreme Court instead of a transcript thereof or of a statement of evidence pursuant to Equity Rule 75, on appeal to said Court in said cause, which said original record of said proceedings consists of the papers, documents, testimony and exhibits specified and enumerated in the last paragraph of the foregoing stipulation, and

[fol. 185] It Is Further Ordered that the said original record of proceedings at said trial may likewise be transmitted and used on appeal to the United States Supreme Court in the case of City of Oakland, etc. vs. United States of America, et al., No. 22002-L, hereinabove mentioned.

Dated: February 17th, 1943.

William Healy, United States Circuit Judge; Michael J. Roche, United States District Judge; A. F. St. Sure, United States District Judge.

[fol. 186] IN DISTRICT COURT OF THE UNITED STATES.

No. 22002-L

[Title omitted]

**Petition for Appeal, Assignment of Errors and Prayer for Reversal—Filed January 28, 1943**

This is a suit to annul, enjoin and set aside an order of the United States Maritime Commission purporting to regulate under the Shipping Act, 1916, as amended, certain rates and practices of appellant on its municipally owned and operated wharves. It involves questions as to whether appellant is subject to said act and if Congress had power to subject appellant to such act. A statutory three-judge [fol. 187] court, constituted pursuant to Section 47, Title 28, and Section 830, Title 46, U. S. Code, granted an interlocutory injunction and at a final hearing entered a final decree denying a permanent injunction and dismissing appellant's petition and bill.

Considering itself aggrieved by such final judgment and decree, the petitioner herein hereby prays that an appeal be allowed from said final judgment and decree to the Supreme Court of the United States and for an order fixing the amount of the cost bond on appeal therein.

**ASSIGNMENT OF ERRORS**

Petitioner hereby assigns the following errors in the record and proceedings in said case.

The District Court of the United States for the Northern District of California, Southern Division, erred in the following particulars:

- (1) The Court erred in making and entering its final decree denying the permanent injunction prayed for, and in dismissing the petition and bill;
- (2) The Court erred in refusing to make and enter its decree annulling, setting aside and permanently enjoining the order of the United States Maritime Commission designated in said petition and bill;
- (3) The Court erred in finding and concluding that this petitioner is subject to the power of Congress to regulate



interstate and foreign commerce in respect to the activities affected by said order of said Commission;

(4) The Court erred in finding and concluding that this petitioner is an "other person" as defined in the Shipping Act, 1916, as amended;

(5) The Court erred in finding that petitioner's rules, regulations and practices with respect to free-time were or [fol. 188] are unduly preferential and prejudicial within the meaning of Section 16 of the Shipping Act, 1916, or unreasonable regulations and practices within the meaning of Section 17 of said act;

(6) The Court erred in finding that the evidence before the Commission and the Court is insufficient to establish that petitioner's rates for wharf storage are unduly preferential or prejudicial within the meaning of Section 16 of the Shipping Act, 1916, as amended, or that they constitute an unreasonable regulation or practice within the meaning of Section 17 of said act in that the evidence establishes that such rates are greater than appellant's out-of-pocket costs incurred in connection with such service;

(7) The Court erred in finding that there was evidence to support the finding of the Commission that the minimum rates for wharf demurrage and wharf storage prescribed by the Commission are not in excess of the cost of the service to this petitioner, if by cost is meant out-of-pocket cost of such service;

(8) The Court erred in finding that the services performed by petitioner in connection with wharf storage and wharf demurrage are carried on in connection with a common carrier by water;

(9) The Court erred in finding that leases between this petitioner and its lessees are agreements subject to the provisions of Section 15 of the Shipping Act, 1916, as amended.

#### PRAYER FOR REVERSAL

For which errors petitioner prays that said final decree of the District Court of the United States for the Northern District of California, Southern Division, made and entered on December 1, 1942, in the above entitled cause, be re-

versed, and that said Court be ordered to enter a decree in favor of petitioner and appellant, and for costs.

Dated: January 28, 1943.

W. Reginald Jones, Port Attorney, Attorney for  
Petitioner and Appellant, City of Oakland.

[fol. 189] IN THE DISTRICT COURT OF THE UNITED STATES

No. 22002-L

[Title omitted]

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF COST BOND  
ON APPEAL—Filed January 28, 1943

The Petitioner and Appellant in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the final decree made and entered in the above entitled suit by the District Court of the United States for the Northern District of California, Southern Division, on the 1st day of [fols. 190-191] December, 1942, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and rules of the United States in such case made and provided:

It Is Now Ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the final decree of the District Court of the United States for the Northern District of California, Southern Division, made and entered on December 1, 1942, in the above entitled cause, as provided by law, and it is further ordered that the Clerk of said District Court shall prepare and certify a transcript of the record, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within sixty (60) days of this date.

And it is further ordered that petitioner and Appellant furnish a bond to secure costs on said appeal, and that the amount of said bond be and hereby is fixed in the sum of Five Hundred (\$500.00) Dollars.

Dated: January 28, 1943.

William Healy, United States Circuit Judge.

[fols. 192-194] Citation in usual form omitted in printing.

[fol. 195] IN DISTRICT COURT OF THE UNITED STATES

No. 22002-L

[Title omitted]

STIPULATION AND ORDER AS TO RECORD ON APPEAL—Filed  
February 17, 1943

It Is Hereby Stipulated by and between Petitioner and Appellant above named and Defendants and Appellees and Interveners and Appellees above named that there shall be included and incorporated in the transcript of record in this cause on appeal to the United States Supreme Court the following papers, documents, testimony and exhibits:

1. Petition and Bill for Injunction and attached exhibit;  
[fol. 196] 2. Order Consolidating Actions for Trial, Permitting Intervention, and Granting Interlocutory Injunction;

3. Answer of the United States of America and United States Maritime Commission and attached exhibit;

4. Order Permitting Encinal Terminals, a corporation, to Intervene and be Treated as a Defendant in the Above Entitled Proceedings;

5. Answer of Intervenor Encinal Terminals;

6. Order Permitting Howard Terminal, a corporation, to Intervene and be Treated as a Defendant in the Above Entitled Proceedings;

7. Answer of Intervenor Howard Terminal;

8. Order Permitting Parr-Richmond Terminal Corporation, a corporation, to Intervene and be Treated as a Defendant in the Above Entitled Proceedings;

9. Answer of Intervenor Parr-Richmond Terminal Corporation;

10. Withdrawal of Attorney;

11. Opinion of statutory three-judge Court;

12. Findings of Fact and Conclusions of Law;

13. Final Decree;

14. Petition for Appeal, Assignment of Errors and Prayer for Reversal;

15. Order Allowing Appeal and Fixing Amount of Cost Bond on Appeal;

16. Citation on Appeal;
17. Statement as to Jurisdiction on Appeal;
18. Notice and receipt of service of documents on Solicitor General;
19. Notice and receipt of service of documents on other Appellees;
20. Notice of Appeal;
- [fol. 197] 21. Copy of Bond for Costs on Appeal;
22. Minutes of the Court of February 26, 1942;
23. Minutes of the Court of May 21, 1942;
24. This Stipulation and Order;
25. Clerk's certificate.

And It Is Further Stipulated that pursuant to Section 210, Judicial Code, and Title 28, Section 47a, United States Code, in addition to the papers and documents hereinabove stipulated to be included in the transcript of record on appeal in said cause, the original record of the proceedings had in the trial Court in the above entitled cause before the statutory three-judge Court be transmitted by the Clerk of this Court to the Clerk of the United States Supreme Court on this appeal instead of a transcript thereof or of a narrative statement of evidence pursuant to Equity Rule 75, which said original record consists of the following papers, documents, testimony and exhibits introduced in evidence at the trial as follows:

Petitioner's Exhibit No. 1, consisting of certified copies of orders and similar papers re Docket No. 555 before the United States Maritime Commission;

Petitioner's Exhibit No. 2, consisting of a certified copy of 1904 pages of testimony taken in the proceedings in Docket No. 555 before the United States Maritime Commission;

Petitioner's Exhibit No. 3, consisting of duplicate copies of one hundred seventy two (172) original exhibits introduced at the hearings in Docket No. 555 before the United States Maritime Commission, which said duplicate copies [fol. 198] of exhibits were substituted for the original exhibits by order of the statutory three-judge court.

Dated: February 17, 1943.

W. Reginald Jones, Port Attorney, Attorney for  
Petitioner and Appellant, City of Oakland; Frank  
J. Hennessey, United States Attorney; Esther B.

Phillips, Assistant United States Attorney, Attorneys for United States of America, Appellee. Carl F. Farbach, Special Counsel for United States Maritime Commission, Appellee. Lillick, Geary, Olson & Charles, Ira S. Lillick, Joseph J. Geary, Attorneys for Encinal Terminals, Appellee. Graham & Morse, Attorneys for Howard Terminal, Appellee. Morrison, Hohfeld, Foerster, Shuman & Clark, F. C. Hutchens, Attorneys for Parr-Richmond Terminal Corporation, Appellee.

---

ORDER FOR TRANSMITTAL OF ORIGINAL RECORD AND EXHIBITS  
TO THE UNITED STATES SUPREME COURT ON APPEAL

Whereas, the above entitled cause was consolidated for trial and was tried in this Court with the case entitled "State of California and Board of State Harbor Commissioners for San Francisco Harbor, Petitioners, vs. United [fol. 199] States of America and United States Maritime Commission, Defendants, Encinal Terminals, Howard Terminal and Parr-Richmond Terminal Corporation, Interveners", and numbered 22000-R in the records of this Court; and

Whereas, the same evidence was introduced and the same proceedings had in all respects in the trial of both of said causes, and said causes are of like nature and are relative to similar and closely related questions; now, therefore, pursuant to Section 210, Judicial Code, and Title 28, Section 47a, United States Code, and in conformity with and pursuant to the foregoing Stipulation, it is hereby

Ordered and Directed by the above entitled Court, acting and sitting as a statutory three-judge Court that, in addition to the papers and documents specified and enumerated in items 1 to 25 inclusive of the foregoing Stipulation, the original record of the proceedings at the trial of the above entitled cause before this Court on February 26, 1942 and May 21, 1942, be transmitted by the Clerk of this Court to the United States Supreme Court instead of a transcript thereof or of a statement of evidence pursuant to Equity Rule 75, on appeal to said Court in said cause, which said original record of said proceedings consists of the papers, documents, testimony and exhibits specified and enumer-

ated in the last paragraph of the foregoing stipulation; and it is further

Ordered that the said original record of proceedings at said trial likewise may be transmitted and used on appeal to the United States Supreme Court in the case of State of California and Board of State Harbor Commissioners for [fol. 200] San Francisco Harbor, Petitioners, vs. United States of America and United States Maritime Commission, Defendants, Encinal Terminals, Howard Terminal and Parr-Richmond Terminal Corporation, Interveners, and numbered 22000-R in the records of this Court.

Dated: February 17, 1943.

William Healy, United States Circuit Judge; Michael J. Roche, United States District Judge; A. F. St. Sure, United States District Judge.

---

[fols. 201-203] Clerk's Certificate to foregoing transcript omitted in printing.

---

[fol. 204] PETITIONERS' EXHIBIT No. 1

Secretary's Certificate to attached transcript omitted in printing.

---

[fol. 205] ORDER

At a Session of the United States Maritime Commission held at its office in Washington, D. C., on the 7th day of November, 1939, A. D.

No. 555

In the Matter of Services, Rates, Charges, Tolls, Rentals, Rules, Regulations, Classifications, Agreements, Acts, Practices, and Operations of the San Francisco Bay Area Terminals Named Herein.

*It appearing*, That each of the terminals named herein carry on the business of forwarding, or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with common carriers by water and, therefore, that



each of said terminals is an "other person subject to this Act" as defined in section 1 of the Shipping Act, 1916, as amended, and as used in sections 15, 16, 17, and 20 of the Shipping Act, 1916, as amended;

*It further appearing,* That all or some of the said terminals named herein, perform services, make rates, charges, tolls, rentals, rules, regulations, classifications, and agreements, and engage in acts and practices which are unfair, unreasonable, unjust or unduly prejudicial or preferential, or otherwise in violation of the law, in that all or some of said terminals:

1. Carry out agreements with common carriers by water, or with other persons subject to this Act, copies or memoranda of which have not been filed with the Commission, as required by section 15 of the Shipping Act, 1916, as amended;

2. By the controlled tonnage and purchasing power or economic influence of their parent companies, divert interstate or foreign waterborne cargo from its natural course, and make or give undue or unreasonable preference or advantage to particular persons, localities, or descriptions of traffic, or subject particular persons, localities, or descriptions of traffic to undue or unreasonable prejudice or disadvantage, in violation of section 16 of the Shipping Act, 1916, as amended;

3. Fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, storing, or delivery of property, as required by section 17 of the Shipping Act, 1916, as amended;

[fols. 206-207] 4. Receive or solicit confidential information from common carriers by water which may be used to the detriment or prejudice of common carriers, shippers or consignees, in violation of section 20 of the Shipping Act, 1916, as amended; and

*It further appearing,* That the said services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts and practices referred to above, adversely affect interstate or foreign waterborne commerce, and tend to create a chaotic condition in the terminal industry in the San Francisco Bay area;

*It is ordered,* That the Commission, upon its own motion and without formal pleading, enter upon an investigation to determine whether or not the said services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of all or any of the said terminals herein named are in violation of sections 15, 16, 17, and 20 of the Shipping Act, 1916, as amended; and

*It is further ordered,* That the Board of Port Commissioners, Port of Oakland; Eldorado Terminal, and Eldorado Oil Works, Encinal Terminals; Golden Gate Terminals; Howard Terminal; Islas Creek Grain Terminal Corporation; Parr-Richmond Terminal Corporation; Port of Sacramento; Port of Stockton; South San Francisco Terminal Company; Standard Coal Company of California; State Terminal Company, Ltd.; and West Coast Wharf and Storage Company, be, and they are hereby, made respondents in this proceeding; and

*It is further ordered,* That this proceeding be served upon each of said respondents; and

*It is further ordered;* That this proceeding be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

(Seal.) (Sgd.) W. C. Peet, Jr., Secretary.

[fols. 208-210]

#### SUPPLEMENTAL ORDER

At a Session of the United States Maritime Commission held at its office in Washington, D. C., on the 30th day of November A.D. 1939.

No. 555

In the Matter of Practices, etc., of San Francisco Bay Area Terminals

*It appearing,* That the Commission by order dated November 7, 1939, instituted this proceeding to determine whether or not the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of all or any of the terminals named

in said order are in violation of sections 15, 16, 17 and 20 of the Shipping Act, 1916, as amended;

*It further appearing*, That the Board of State Harbor Commissioners, Port of San Francisco, carries on the business of furnishing wharfage, dock or other terminal facilities in connection with common carriers by water and, therefore, is an "other person subject to this Act" as defined in section 1 of the Shipping Act, 1916, as amended;

*It is ordered*, That the said Board of State Harbor Commissioners, Port of San Francisco, be, and it is hereby, made a respondent to this proceeding;

*It is further ordered*, That a copy of this order, and a copy of the aforesaid order dated November 7, 1939 which by reference thereto is made a part hereof, be served upon the said Board of State Harbor Commissioners, Port of San Francisco, San Francisco, California, and that said Board of State Harbor Commissioners be duly notified of the time and place of hearings conducted in this proceeding; and

*It is further ordered*, That a copy of this order be served upon each respondent named in the aforesaid order dated November 7, 1939.

By the Commission.

(Seal.) (Sgd.) W. C. Peet, Jr., Secretary.

[fols. 211-215]

#### SUPPLEMENTAL ORDER

At a Session of the United States Maritime Commission held at its office in Washington, D. C., on the 3rd day of February A. D. 1940.

No. 555

In the Matter of Practices, etc. of San Francisco Bay Area Terminals

*It appearing*, That the Commission by order dated November 7, 1939, instituted this proceeding to determine whether or not the services, rates, charges, tolls, rentals, rules, regulations, classifications, agreements, acts, practices and operations of all or any of the terminals named in said order are in violation of sections 15, 16, 17 and 20 of the Shipping Act, 1916, as amended;

*It further appearing,* That the Commission by supplemental order dated November 30, 1939, made the Board of State Harbor Commissioners, Port of San Francisco, a respondent to this proceeding;

*It further appearing,* That the State of California by and through a board, known as the Board of State Harbor Commissioners, Port of San Francisco; the Port of Redwood City; Albers Brothers Milling Company; Interstate Terminal; Grangers Terminal Company; and The River Lines, carry on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with common carriers by water and, therefore, are "other persons subject to this act" as defined in section 1 of the Shipping Act, 1916, as amended;

*It is ordered,* That the State of California; the Port of Redwood City; Albers Brothers Milling Company; Interstate Terminal; Grangers Terminal Company; and The River Lines, be, and they are hereby, made respondents to this proceeding;

*It is further ordered,* That a copy of this order, and a copy of the aforesaid orders dated November 7, 1939, and November 30, 1939, which orders by reference thereto are made a part hereof, be served upon the said additional respondents named herein and that they be duly notified of the time and place of hearings conducted in this proceeding; and

*It is further ordered,* That a copy of this order be served upon each respondent named in the aforesaid orders dated November 7, 1939, and November 30, 1939.

By the Commission.

(Seal.) (Sgd.) W. C. Peet, Jr., Secretary.

---

[fol. 216] Report and order of Maritime Commission omitted. Printed side page 17 ante.

---

[fols. 217-225] Petition of Respondents State of California and Board of State Harbor Commissioners for San Francisco Harbor, named herein as Board of State Harbor Commissioners, Port of San Francisco, for Reconsideration. Omitted. Printed side page 47 ante.

[fol. 226] BEFORE THE UNITED STATES MARITIME COMMISSION

Docket No. 555

In the Matter of Practices, etc. of San Francisco Bay Area  
Terminals

PETITION FOR RECONSIDERATION—October 10, 1941

[fol. 227] Comes now Respondent Board of Port Commissioners of the City of Oakland and respectfully petitions that the Commission reconsider its order hereinbefore filed in the above entitled proceeding, and in support thereof represents:

I

That the order makes no finding on the issue that the procedure adopted by the Commission in this proceeding denied this Respondent due process of law.

II

That the order is erroneous in that it finds that Congress has constitutional power to regulate a state agency such as this Respondent in the operation of wharves.

III

That the order is erroneous in that it determines that Congress has attempted to give the Commission power to regulate a state agency such as this Respondent in the operation of wharves.

[fol. 228]

IV

That the order is erroneous in that it determines that Congress has given the Commission the power to regulate the rates of any wharfinger.

V

That the order is erroneous in that it makes no finding on the issue that wharf storage is furnished independently of the carrier and consequently is not within the Commission's jurisdiction.

## VI

That the order is erroneous in that it makes no finding on the issue that wharf storage rates need not be compensatory.

## VII

That the order is erroneous in that it determines that the wharf storage rates presently in effect in the tariff of this Respondent are unlawful.

## VIII

That the order is erroneous in that it does not determine that the wharf storage rates presently in effect in the tariff of this Respondent are sufficient to meet the out-of-pocket costs incurred in connection therewith.

## IX

That the order is erroneous in that it prescribes a shorter free time allowance than is presently in effect in the tariff of this Respondent.

[fol. 229]

## X

That the order is erroneous in that it determines that the lease between this Respondent and Howard Terminal is an agreement within the contemplation of Section 15, Shipping Act, 1916.

## XI

That the order is erroneous in that it determines that the pier assignment between McCormick Steamship Company and this Respondent is an agreement within the contemplation of Section 15, Shipping Act, 1916.

## XII

That the order violates Section 9 of Article I of the United States Constitution in that it is a regulation of commerce which gives preference to the ports of the states of Washington and Oregon over the respondents in this proceeding in two respects, namely, by prescribing higher wharf storage rates for these respondents while permitting such other ports to maintain lower rates than those prescribed, and by prescribing a shorter free time period for these respondents than is permitted to remain in effect in



such other ports. That such other ports in the states of Washington and Oregon are in competition with this Respondent in connection with the transpacific and inter-coastal trades.

This Respondent respectfully urges the Commission that it reconsider its order for each of the reasons above set [fol. 230] forth, and in that connection to reread the original and reply briefs filed by this Respondent in this proceeding. No good would be achieved to repeat here what was set forth in those briefs. There is little to add to the points that were made, and this Respondent is convinced of the soundness of its position.

In view of the fact that the order of the Commission becomes effective on October 27, 1941, it is respectfully requested that the Commission determine forthwith whether or not it will reconsider the issues involved in this docket. That if reconsideration is given, the effective date of the order be postponed until such a reasonable time after the determination on reconsideration has been reached. That if reconsideration be not granted, that this Respondent receive notice to that effect a reasonable time before October 27, 1941 in order that it may take such steps in regard to the order as it may be advised.

Dated at Oakland, California, October 10, 1941.

Respectfully submitted, Charles A. Beardsley, Port Attorney; W. Reginald Jones, Assistant Port Attorney.

[fol. 231]

### Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing via first-class mail, postage prepaid a copy to each such party in sufficient time to reach such party on the due date.

Dated at Oakland, California, this 10th day of October, 1941.

W. Reginald Jones.

[fol. 232]

## ORDER

At a Session of the United States Maritime Commission, held at its office in Washington, D. C., on the 23d day of October, A. D. 1941.

No. 555

## Practices, etc. of San Francisco Bay Area Terminals

Upon consideration of petition filed by respondents State of California and Board of State Harbor Commissioners for San Francisco Harbor, dated October 15, 1941, and petition filed by Board of Port Commissioners of the City of Oakland, dated October 10, 1941, for reconsideration; and of petition filed by respondent Stockton Port District, dated October 9, 1941, Petition filed by intervener California and Hawaiian Sugar Refining Corporation, Ltd., dated October 14, 1941, and telegraphic request made by respondent Encinal Terminals, Howard Terminal, and Port-Richmond Terminal Corporation, dated October 18, 1941, for postponement of the effective date of the order entered herein, dated September 11, 1941, and upon consideration of the record in this proceeding;

*It is ordered*, That the petitions and requests be, and they are hereby, denied.

By the Commission.

(Seal.) (Sgd.) W. C. Peet, Jr., Secretary.

## BEFORE THE UNITED STATES MARITIME COMMISSION

Docket No. 555

In the Matter of SERVICES, RATES, CHARGES, RULES, REGULATIONS, ETC., OF SAN FRANCISCO BAY AREA TERMINALS

Empire Hotel,  
San Francisco, California,  
February 13, 1940.

Met, pursuant to notice, at 10:00 a. m.  
Before G. O. Basham, Examiner.

## APPEARANCES:

David E. Scoll, Samuel D. Slade, Attorneys for the Commission.

T. G. Differding, Special Expert to the Commission.

A. L. Jordan, Special Examiner for the Commission.

W. Reginald Jones, Assistant Port Attorney, and M. D. McCarl, Assistant Port Manager and Traffic Manager, of the Board of Port Commissioners of the City of Oakland, Grove Street Pier, Oakland, California, appearing for the Board of Port Commissioners of the City of Oakland, Respondents.

W. F. Williamson and R. P. Norton, 310 Sansome Street, San Francisco, California, appearing for Eldorado Terminal Company and Eldorado Oil Works, Respondents.

Pillsbury, Madison & Sutro, by Eugene D. Bennett and Hugh T. Fullerton, Standard Oil Building, San Francisco, [fol. 2] California; and Lillick, Geary Olson & Charles, by Joseph J. Geary, 311 California Street, San Francisco, California, appearing for Encinal Terminals, Respondents.

Chalmers G. Graham, 311 California Street, San Francisco, California; appearing on behalf of Howard Terminal, Respondent.

Earl Warren, Attorney General of the State of California, by Lucas E. Kilkenny, Deputy Attorney General, Sacramento, California; appearing for State of California, Board of State Harbor Commissioners for San Francisco Harbor, Respondent.

F. A. Somers, 465 California Street, San Francisco, California; appearing for Grangers Terminal Co., Port Costa, California, Respondent.

W. G. Stone, 917 7th Street, Sacramento, California; appearing for Port of Sacramento and the Sacramento Chamber of Commerce, Respondent.

P. J. Shaw, South San Francisco, California; appearing for South San Francisco Terminal Company, Respondent.

J. Richard Townsend, 1815 Mills Tower, San Francisco, California; appearing for Stockton Port District and Parr-Richmond Terminal Corporation, Respondents.

Fred D. Parr, No. 1 Drumm Street, San Francisco, California; appearing for Parr-Richmond Terminal Corporation, Respondent.

B. C. Allin, P. O. Box 2089, Stockton, California; appearing for Stockton Port District, Respondent.

Leslie M. Rudy, Redwood City, California; appearing for the Port of Redwood City, Respondent.

C. O. Burgin, 1100 West Poplar Street, Stockton, California; appearing for Port of Stockton, Respondent.

C. S. Connolly, 111 W. Massachusetts Street, Seattle Washington; appearing for Albers Bros. Milling Co. and Interstate Terminals, Ltd., Respondents.

[fol.3] W. S. Bell, San Francisco, California; appearing for Islais Creek Grain Terminal Corporation, Respondent.

McCutchen, Olney, Mannon & Greene, by J. H. Anderson and F. W. Mielke, Balfour Building, San Francisco, California; appearing for The River Lines, Respondent.

H. V. Nootbarr, Oakland, California, appearing for West Coast Wharf & Storage Company, Respondent.

Joseph J. Burns, Box 54, Alameda, California; appearing for Standard Coal Company, Respondent.

W. R. Gerini, San Francisco, California; appearing for State Terminal Company, Ltd., Respondent.

J. R. West, appearing for Northwest Marine Terminal Association, Intervener.

C. A. Hoffman, San Diego, California; appearing for the Port of San Diego, Intervener.

L. A. Bailey, 216 Pine Street, San Francisco, California; and Reginald L. Vaughan, Mills Tower, San Francisco, California; appearing for Warehousemen's Association of the Port of San Francisco, Intervener.

E. M. Cole, American Cast Iron Pipe Co., Birmingham, Alabama; appearing for American Cast Iron Pipe Co. and the Cast Iron Pressure Pipe Institute, Intervener.

Edwin G. Wilcox, Financial Center Building, San Francisco, California; appearing for Oakland Chamber of Commerce, Intervener.

Elmer Westlake, 215 Market Street, San Francisco, California; appearing for Western Sugar Company and Spreckels Sugar Refinery, #2 Pine Street, San Francisco, California; and California and Hawaiian Sugar Refining Corporation, Ltd., 215 Market Street, San Francisco, California, Intervener.

[fol. 4] Reginald F. Walker, 2 Pine Street, San Francisco, California; appearing for Western Sugar Refinery and Spreckels Sugar Company, Intervener.

H. A. Lincoln, 701 Russ Building, San Francisco, California; appearing for Fibreboard Products, Inc., Intervener.

Walter A. Rohde, 333 Pine Street, San Francisco, California; appearing for San Francisco Chamber of Commerce, Intervener.

Warren H. Lamont, Vice president; John L. Kelly, Secretary; Elor J. Amar, Port Manager; Chas. A. Bland, Traffic Manager of the Board of Harbor Commissioners, Long Beach, California, appearing for Board of Harbor Commissioners of Long Beach, California, Interveners.

Clyde M. Leach, Los Angeles, California, appearing for Board of Harbor Commissioners of the City of Los Angeles, Intervener.

L. N. Fites, 2900 5th Street, Berkeley, California; appearing for The Glidden Company, Berkeley, California, Intervener.

J. K. Hiltner, Burlington, New Jersey; appearing for United States Pipe & Foundry Company, and the Cast Iron Pressure Pipe Institute, Intervener.

[fol. 5]

#### COLLOQUY

Examiner Basham: Come to order, please.

The United States Maritime Commission has set for hearing at this time and place, Docket No. 555, in the Matter of Practices, etc., of San Francisco Bay Area Terminals.

This is an investigation to determine whether or not the services, rates, charges, codes, rentals, rules, regulations, classifications, agreements, acts, practices and opera-

tions of all or any of the terminals named in the Order are in violation of Sections 15, 16, 17 and 20 of the Shipping Act of 1916, as amended.

I should like now to call for the appearances on behalf of the respondents.

Mr. Jones: W. Reginald Jones, Assistant Port Attorney, and M. D. McCarl, Traffic Manager and Assistant Port Manager of the Board of Port Commissioners of the City of Oakland. This appearance is subject, however, to the following motion:

We hereby move you, Mr. Examiner, that the present proceedings be dismissed as to the Respondent Board of Port Commissioners on the ground that this Commission has no jurisdiction over a municipal corporation or a state agency; that Congress has no constitutional power to regulate the governmental activities of those local bodies.

Examiner Basham: That motion will be overruled.

[fol. 6] Mr. Jones: May it be understood, Mr. Examiner, that our continued appearance in this proceeding is subject at all times to that motion?

Examiner Basham: Yes, sir. Anyone else?

Mr. Conolly: C. S. Conolly; Albers Bros. Milling Co. and Interstate Terminals.

Mr. Graham: Chalmers G. Graham, Howard Terminal.

Mr. Townsend: J. Richard Townsend, speaking for the Stockton Port District, which operates the Port of Stockton; Colonel B. C. Allin, Director of the Port, and Mr. C. O. Burgin, Traffic Manager. The addresses of those two are Port of Stockton, Stockton, California. My address is 1815 Mills Tower, San Francisco.

For the Parr-Richmond Terminal Corporation, Mr. Fred D. Parr, President, No. 1 Drum Street, San Francisco, and J. Richard Townsend, 1815 Mills Tower, San Francisco.

Mr. Somers: F. A. Somers; Grangers Terminal Co.

Mr. Bell: W. S. Bell, Islais Creek Grain Terminal Corporation.

Mr. Norton: W. F. Williamson and R. P. Norton, appearing for Eldorado Terminal Company and Eldorado Oil Works.

Mr. Kilkenny. Mr. Chairman, may I enquire whether the State of California and Board of State Harbor Commis-



sioners of San Francisco Harbor are separately made [fol. 7] respondents? I am not sure.

Examiner Basham: That is my understanding.

Mr. Kilkenny: At this time, if your Honor pleases, Earl Warren, Attorney-General of the State of California, and Lucas Kilkenny, Deputy Attorney-General, make a special appearance for the State of California, respondents, and Board of State Harbor Commissioners and move to dismiss this investigation so far as it relates to either of these respondents, on the ground that the Commission is without authority to investigate any of the practices, or acts of the State of California or the Board of State Harbor Commissioners for San Francisco Harbor, respondents in this proceeding; on the further ground that there is no constitutional authority for Congress to extend its regulatory power in any manner over either the State or the Board; and that the Shipping Act of 1916 does not apply to or include the State of California or the Board of State Harbor Commissioners for San Francisco Harbor; and that the Commission is not authorized by any other statutory authority to investigate any of the matters or things referred to in the Shipping Act of 1916, as amended, and particularly Sections 15, 16 and 17 of that Act.

Examiner Basham: The motion will be denied.

Mr. Kilkenny: If your Honor please, then, we will appear generally subject to that ruling. May I ask that if [fol. 8] we request or deem it advisable, we may later file a formal objection to the jurisdiction?

Examiner Barton: Yes, sir.

Any further appearances?

Mr. Shaw: P. J. Shaw, South San Francisco, California; for the South San Francisco Terminal Company.

Mr. Stone: W. G. Stone, 917 7th Street, Sacramento; for the Port of Sacramento and the Sacramento Chamber of Commerce.

Mr. Wilcox: Edwin G. Wilcox, Financial Center Building; for the Oakland Chamber of Commerce.

Mr. Bailey: Leon A. Bailey, 216 Pine Street, San Francisco, California; and Reginald L. Vaughan, Mills Tower, San Francisco, California; appearing for Warehousemen's Association of the Port of San Francisco.

Mr. Rudy: Leslie M. Rudy, appearing for the Port of Redwood City.

Mr. Bennett: Pillsbury, Madison & Sutro, by Eugene D. Bennett and Hugh T. Fullerton, Standard Oil Building, San Francisco, California; Lillick, Geary, Olson & Charles, by Joseph J. Geary, 311 California Street, San Francisco; for Encinal Terminals.

Mr. Mielke: J. H. Anderson and F. W. Mielke, of McCutchen, Olney, Mannon & Greene appearing for the River Lines.

[fol. 9] Mr. Burns: Joseph J. Burns, for the Standard Coal Company.

Mr. Nootbaar: H. V. Nootbaar, for the West Coast Wharf & Storage Company.

Examiner Basham: Is that all?

Mr. West: J. R. West; Marine Terminal Association.

Mr. Rohde: Walter A. Rohde, for the San Francisco Chamber of Commerce.

Mr. Lamont: Board of Harbor Commissioners of Long Beach, Mr. Examiner: Warren H. Lamont; John L. Kelly; Elor J. Amar and Charles A. Bland.

Mr. Westlake: Elmer Westlake, 215 Market Street, San Francisco, for Western Sugar Company, Spreckels Sugar Refinery; both located at No. 2 Pine Street, San Francisco; and California and Hawaiian Sugar Refining Company, Ltd., 215 Market Street, San Francisco.

Mr. Leach: Clyde M. Leach for the Board of Harbor Commissioners for the City of Los Angeles.

Mr. Hoffman: C. A. Hoffman for the Port of San Diego.

Mr. Walker: Reginald F. Walker, No. 2 Pine Street, San Francisco; for the Western Sugar Refining and Spreckels Sugar Company.

Mr. Gerini: W. R. Gerini for State Terminal Company of San Francisco.

[fol. 10] Examiner Basham: Are those all of the appearances?

Mr. Hiltner: J. K. Hiltner, Burlington, New Jersey; for United States Pipe & Foundry Company and The Cast Iron Pressure Pipe Institute.

Examiner Basham: Who appears for the Maritime Commission.

Mr. Scoll: David E. Scoll and Samuel D. Skide, attorneys; A. L. Jordan and T. G. Differding.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: Do you have a statement to make?

Mr. Scoll: Mr. Examiner, I should like to state for the benefit of the Respondents and witnesses and others who have appeared and who have been subpoenaed to appear here today that we will take up the issues in this case in the following order:

1. We will consider the agreements, leases and arrangements which it is alleged should be followed under Section 15 of the Commission. Then we will consider alleged violations of Sections 16 and 17 of the Shipping Act of 1916.

Following that we will consider the issue of wharf demurrage.

That is all I have to state on that.

Examiner Basham: All right, sir. Will you call your first witness?

[fol. 11] Mr. Scoll: Is Mr. Mark Gates here?

Mr. Gates: Yes.

Mr. Scoll: Will you take the stand, please, Mr. Gates?

MARK H. GATES was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Will you please tell the reporter your name?

A. Mark H. Gates.

Q. Your occupation?

A. Secretary of the Board of Harbor Commissioners, Port of San Francisco.

Q. How long have you been in that position?

A. A little over 12 years.

Q. Will you describe briefly for the record the functions of the State Board of Harbor Commissioners?

A. Generally speaking, the functions are to provide facilities for the handling of freight and passengers on the San Francisco waterfront; also operate about 65 miles of belt railroad.

Q. The State Board of Harbor Commissioners is a public body, is it not?

[fol. 12] A. The State Board of Harbor Commissioners is a State body. The members are appointed by the Governor of the State.

Q. And it was created under the statutes of the State of California?

A. About 1863, I believe.

Q. And it controls the terminals that you speak of that are operated by it or under its supervision?

A. Yes. It controls all of the commercial waterfront of San Francisco.

Q. Are there any private terminals as such, in San Francisco or are all the terminals under the control of the State Board?

A. All of the terminals are under the control of the State Board.

Q. Does the Board publish a tariff?

A. It does.

Q. Is the Board regulated by the Railroad Commission of the State of California?

A. It is not.

Q. Does it file a tariff with the Railroad Commission?

A. No, it does not.

Q. What are the arrangements under which the Board of Harbor Commissioners assigns space to the various steamship lines that use the terminals under the Board's jurisdiction?

A. They are given a preferential assignment for the use [fol. 13] of certain space, subject to cancellation on 30 days' notice.

Q. Actually, however, these assignments are renewed quite regularly as they expire, are they not?

A. No, they are not renewed. They are allowed to continue until some change is made in them.

Q. Does the Board charge a rent for the use of the space?

A. Yes, it does.

Q. On what base is the rent determined?

A. On a square foot basis.

Q. Does the Board collect any charges for the use of the space, in addition to rent?

A. It collects dockage charges on the vessel; it collects a toll on the merchandise moving over the piers; and it col-

lects a demurrage on cargo remaining on the piers beyond the free time.

Q. These charges that you have just mentioned are all established by the Board?

A. They are.

Q. And published in its tariff?

A. That is right.

Q. I show you, Mr. Gates, Form No. 2, Board of State Harbor Commissioners for San Francisco Harbor, San Francisco, California, entitled "Assignment of Space." This is a form evidently of the space assignment. Is that correct?

A. Yes, sir. That is right. That's a copy of the form.

[fol. 14] Mr. Scoll: I would like to introduce this.

Mr. Kilkenny: Before you introduce that, is that the last form?

The Witness: I think so.

Mr. Scoll: I would like to introduce this form for the record.

Examiner Basham: It will be received as Exhibit No. 1.

(The form of space assignment referred to was marked "Commission's Exhibit No. 1" and received in evidence.)

By Mr. Scoll:

Q. I will show you a typewritten list entitled "Board of State Harbor Commissioners for San Francisco Harbor, Pier and Wharf Area Assigned for Shipping, Statement of Pier and Wharf Assignments in effect as of January 24, 1940."

A. Yes. That was taken from the records of the Board and I think it covers all of the assignments on the piers for the cargo handling purposes.

Q. Was that list prepared by you or under your supervision?

A. Under my supervision, yes.

Q. Golden Gate and State Terminal Company, Limited that are indicated on there, they are terminal operators, are they not?

A. That's right.

Q. And they hold under assignments from the State [fol. 15] Board of Harbor Commissioners?

A. They have assignments for office space only.

Q. And on what basis do they pay rent?

A. They just pay for their office rent.

Q. They don't hold any assignment of any other space but the office?

A. No, that's all.

Mr. Scoll: I would like to offer this list for the record. It is a list entitled "Pier and Wharf Area Assigned for Shipping," just identified by Mr. Gates.

Examiner Basham: It will be received as Exhibit No. 2.

(The list of pier and wharf area assigned for shipping referred to was marked "Commission's Exhibit No. 2" and received in evidence.)

By Mr. Scoll:

Q. Now, Golden Gate and State Terminals do perform terminal services on the piers which they occupy, do they not?

A. That's right.

Q. What piers do they occupy?

A. The State Terminal occupies what we term as "Pier 56" and the Golden Gate Terminals occupy Pier 45.

Q. Now, do they operate those terminals under your supervision?

A. Yes.

[fol. 16] A. And control?

A. Yes, sir.

Q. Will you describe briefly the extent of your supervision and control which you exercise over their operations?

A. Well, the Board has complete control over the facilities. They are simply there to handle such cargo as they may be able to obtain and to handle for the shipper.

Q. Are these the only terminal operators who hold assignments from the Board?

A. No. There is one more: The Islais Creek Grain Terminal Corporation.

Q. Now, the terminal services which they perform for shippers, consignees and steamship lines, do they perform for themselves or acting as your agent?

A. Oh, for themselves. These services they perform, they perform for themselves.



Q. The space which they occupy for the services, in addition to the office space, that would be the transit shed and adjoining spaces, and they pay no rent for those?

A. No rent.

Q. What charges does the Board of Harbor Commissioners collect from these terminals?

A. They collect the same charges that they do on all other piers; dockage tolls and demurrage.

Q. And all other charges, such as service charges, storage [fol. 17] charges, if any, or other charges which they might collect they collect for themselves?

A. Not storage charges because they collect only charges for services which they perform. The Board of State Harbor Commissioners collect all storage charges on cargo or demurrage charges on cargo contained in the terminals.

Mr. Scoll: That is all for the moment. I want to call you again in a few minutes.

Examiner Basham: Just a moment, please. Any questions?

Cross-examination.

By Mr. Somers:

Q. I should like to ask Mr. Gates concerning the Islais Creek Grain Terminal Corporation as to its occupancy of a certain section of the Islais Creek Terminal for grading and cleaning grain. Is that not operated under a rental arrangement?

A. Yes, it is, Mr. Somers.

Q. How much area is included in that particular activity?

A. I couldn't tell you offhand.

Q. What is the monthly rental charge?

A. I believe, and I am only—I want to check this—I believe that it is \$250 a month.

Q. Tell me about the concession enjoyed by the Islais Creek Grain Terminal Corporation in the unloading, re- [fol. 18] ceiving, weighing, piling and redelivering, reloading of grain, etc. They perform that, do they not, under their own direct control and without any interference on your part?

A. There is no interference. However, it is always subject to the control of the Board of State Harbor Commissioners.

Q. What rate do they pay for that valuable concession? Strike out the word "valuable." In what way do they pay for that concession?

A. Well, they pay the Board only a rental for such space as they use for their cleaning and grading operations and their offices.

Q. Under whose direct control is all the grain that is delivered at the terminal?

A. It's under the control of the Islais Creek Terminal Corporation.

Q. Do they have legal jurisdiction over its movement, or is that vested in the State Board of Harbor Commissioners?

A. Well, I don't know about the legal question involved, but the Board of State Harbor Commissioners has complete control at all times and can make any changes or issue any orders that they see fit.

Q. Let me ask you if a farmer, we will say, desires to deliver some grain to San Francisco to be held on bulk-head demurrage for a period, whom does he consult? You? [fol. 19] The State Board of Harbor Commissioners, or the Islais Creek Grain Corporation?

A. Generally we consult the Islais Grain Terminal Corporation; sometimes the Board of Harbor Commissioners.

Q. Pardon me?

A. Generally, I say, and in most cases they consult the operators of the terminal. But in some cases they consult the Board of State Harbor Commissioners.

Q. In other words, the Islais Creek Grain Terminal has general jurisdiction and management over that particular terminal as to when and from whom grain shall be received and to whom it shall be delivered, etc.?

A. Well, as far as I know, the Islais Creek Grain Terminal Corporation has never refused to accept any grain that has been offered to it by any shipper. If that were done, I am inclined to believe that the Board would take a hand in the situation.

Q. How about a farmer?

A. A farmer, any shipper. The terminal is open to any shipper who wishes to make use of it.

Q. Has anybody ever applied to you for the concession of servicing grain at that terminal?

A. No.

Q. Is there any method that you might determine who shall enjoy the concession? Is there any rule or practice [fol. 20] that governs you?

A. Well, there is this: That in order to operate a terminal someone must have charge of it and be responsible for the merchandise in the terminal; and, therefore, it's usually turned over to one company or one party, who is held responsible by the Board of State Harbor Commissioners, and who is responsible for the operations and for the merchandise.

Q. I think I asked the question before, but to clarify it a little bit. In whose custody is the grain on the Islais Creek Grain Terminal vested?

A. Well, the Board of State Harbor Commissioners has no responsibility in any case for cargo shipped through the port.

Q. You have no watchman at night?

A. We have some watchman but we are not responsible for cargo. That is usually the responsibility of the steamship companies, or the terminal operator.

Mr. Somers: I think that is all.

By Mr. Townsend:

Q. I have one question, please. Who collects the storage at the Islais Creek Grain Terminal; the storage charges?

A. The Board of State Harbor Commissioners.

Q. Is there much of a storage charge for that facility?

A. Considerable, yes.

Q. And that is for the storage of grain there?

[fol. 21] A. Grain, yes.

Mr. Townsend: That is all, thank you.

Redirect examination.

By Mr. Scoll:

Q. Mr. Gates, before you leave the stand, what employees of the Board perform any duties in connection with the three terminal operations we have just been discussing: The Golden Gate, State and Islais Creek?

A. The State Wharfinger.

Q. The State Wharfinger?

A. Yes.

Q. And his duties extend to all of these piers, not only to these three?

A. That is right.

Q. Are there any employees of the Board whose duties are confined to employment or work performed on these three terminals alone?

A. Well, the Wharfinger who performs services at these terminals may also perform services at a wharf adjacently; the next wharf.

Q. The State Wharfinger has general supervision over all of that?

A. General supervision over all of them; yes.

Q. Are there some State employees who work only on these terminals?

[fol. 22] A. No; for instance, take Islais Creek Terminal. There is also another wharf down there where considerable lumber is handled; another product. And the Wharfinger handles both of these facilities.

Q. The State Wharfinger?

A. The State Wharfinger.

Q. Well, you would say that there are no State employees—that is, employees of the Board—whose duties are confined exclusively to employment on these three or any one of the terminals?

A. Well, it might happen, but usually the work of the Wharfinger is distributed so that each one has a certain amount to do, and it may be one or two or three piers. I couldn't tell you just exactly where they are, each one of them.

Q. And those employees under the direction of the State Wharfinger would do work perhaps on any or all of the terminals?

A. Oh, they do; yes.

Q. And the State Wharfinger is the only State employee whose duties would spread over all of these terminals?

A. Well, yes. It is his duty to take note of all the cargo and all the movements of all the vessels; make a record of them; make the necessary charges.

Q. He and his employees?

[fol. 23] A. He and his assistants.

Q. I mean assistants.

A. Yes.

Mr. Scoll: That is all for the moment.

### Recross examination.

By Mr. Kilkenny:

Q. Mr. Gates, does the Wharfinger make the same kind of collection at that terminal as he does at all other piers?

A. Yes.

Q. That is, he collects all the dockage?

A. Yes.

Q. All the tolls?

A. Yes.

Q. What else?

A. The demurrage.

Q. The rental is paid?

A. Directly to the office of the Board.

Mr. Scoll: Would that also be true of the storage charges on these terminals?

The Witness: The Chief Wharfinger reports all those charges.

By Mr. Kilkenny:

Q. When you speak of "Storage charges" what do you mean?

A. Well, we term them "Demurrage charges."

Q. That is simply a charge for commodities that are left [fol. 24] on the wharf?

A. Just a charge for commodities that are left on the wharf beyond the free time.

Q. What is the free time allowed?

A. The free time is allowed in some cases, five days, sometimes seven, according to the circumstances; sometimes ten days for either assembly or removing cargo from the wharf. It is a reasonable time for assembling cargo for the loading of a vessel or a reasonable time for the removal of cargo from the piers after its discharge from the vessel.

Q. That is all fixed by rules and regulations of the Board?

A. It is.

Q. And the charges are fixed by the rules and regulations?

A. That is right.

Q. Taking up that matter of storage again, is there any storage in that terminal besides the storage on the wharf that you have spoken of?

A. I don't quite understand your question.

Q. Is there any other storage there by the assignee of space?

A. No, no.

Q. And the only storage that is there is the leaving of goods on the wharf beyond the free time, is that right?

A. That is right.

Q. And the Board of Harbor Commissioners collects for that?

[fol. 25] A. That is right.

Q. Is grain left there for any other purpose than for shipping?

A. Probably not. It is understood when grain comes in there that it is usually for export, for shipping by water.

Q. And that is the only purpose for which the grain is left on the wharves?

A. Yes.

Q. The Board does not engage in the business of warehousing, is that correct?

A. That is correct; it does not.

Q. It is forbidden by law to do so?

A. It is.

Redirect examination.

By Mr. Scoll:

Q. You stated that all storage of any kind on these terminals is classed as demurrage?

A. Yes.

Q. By that you mean that any storage beyond the free time would be called "demurrage"?

A. That is right.

Q. That storage, however, might run for a considerable time, might it not?

A. Yes, it might.

Q. Both inbound and outbound?

[fol. 26] A. It might.

Mr. Scoll: That is all.

Recross examination.

By Mr. Kilkenny:

Q. Mr. Gates, when you speak of "demurrage" charges, will you explain what the purpose of the demurrage charge is?



A. Well, the charge is made for the use of the facility beyond the free time allowed by the rules of the Board for occupancy of the space.

Q. And it is imposed principally for the purpose of facilitating the movement of goods so as not to clog the space on the wharf?

A. Well, yes. One of the rates applied by the Board on the regular piers is rather a penalty rate for the purpose of forcing cargo off the piers so that it continue to operate the pier.

By Mr. Somers:

Q. One more question, please. The element of time, Mr. Gates; is there any limit of time during which grain may remain at the Islais Creek Terminal under your tariff publication?

A. No, there is not.

Q. It could remain there forever, could it not, unless it became a public nuisance and was condemned for removal?

A. There are no rules against the grain remaining there.

Q. Are you familiar with your tariff? Can you tell us [fol. 27] anything about the charges, per month or so-called bulkhead demurrage?

A. Well, charges are different in the grain terminal from what they are in the other terminals, and I haven't the tariff with me. I can't cite them offhand.

Q. Do you recall the fact that your tariff states that after the first three months the demurrage charge be five cents per ton per month?

A. Yes. It is less after the first three months than it is for the first three months.

Mr. Scoll: Mr. Somers, we are planning to take up the question of wharf demurrage in some detail later on. We are going to cover all that in which you are interested much more extensively later on.

Redirect examination.

By Mr. Scoll:

Q. One further question, Mr. Gates. You mentioned that the demurrage charge on the transit piers, those that are

used almost exclusively for transit operation, such as the steamship piers, I think you had in mind?

A. Yes.

Q. That charge, you say, is high enough to be in effect a penalty charge?

A. Yes.

Q. You don't regard, however, that all of the storage [fol. 28] charges on these terminals are in the nature of penalty charges? They are more in the nature of charges for the occupation of the space?

A. That is right; for the concentration of cargo for out-bound movement.

Mr. Scoll: That is right. That is all.

Examiner Basham: Mr. Gates, you say that the Board collects these charges. Just what are the charges besides dockage and wharfage?

Mr. Scoll: Mr. Examiner, I am going to take that up with the next witness.

Examiner Basham: What I wanted to find out is just exactly what the lessee did in this operation. You say the State collects the charges. What does the lessee do?

The Witness: The State collects the charges for dockage and tolls and demurrage. The lessee collects charges for clerking, handling, and any other service that he may perform for the shipper.

Examiner Basham: I see. I suppose those handling services are performed by employees of the lessee?

The Witness: That is right.

Examiner Basham: That is all.

Mr. Kilkenny: Do I understand that Mr. Gates is going to be recalled?

Mr. Scoll: Yes, very soon.

[fol. 29] Mr. Kilkenny: And we may cross-examine him again in regard to the testimony that he has given now at a later time, Mr. Chairman?

Examiner Basham: That is true.

Mr. Scoll: I am going to call him back shortly. I have two short witnesses, and then I shall recall him.

Mr. Gerini.

W. R. GERINI was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Would you give the reporter your full name, please?

A. W. R. Gerini.

Q. And you are Secretary of the State Terminal Company, Limited?

A. That is correct.

Q. How long have you been the Secretary?

A. Approximately, let us say, eight years; between eight and nine years.

Q. And the State Terminal Company, Limited, is the terminal company that was referred to by Mr. Gates, that operates at Pier 56, is that correct?

A. That is correct.

Q. And it holds an assignment from the Board of Harbor Commissioners?

A. That is correct.

Q. How long has it been operating in that vicinity?

A. The State Terminal Company, Limited, has been operating since June 1, 1931.

Q. Did it operate any other facility prior to its occupation at Pier 56?

A. No, it was a new company.

Q. It is a private corporation, is it not?

A. A private corporation.

Q. And its stock is held by private individuals?

A. By private individuals.

Q. Will you describe for the record briefly the services which State Terminal, Limited, offers at Pier 56?

A. The State Terminal Company, Limited services consist almost entirely of providing terminal services for such steamship companies as may desire them. Also we engage in shipside warehousing on a limited scale.

Q. You may recall that Mr. Gates has stated that certain of the charges applicable to the services at State Terminal are established and collected by State Terminal for its own use. Now, would you elaborate the description of those in more detail?

A. Well, for instance, a steamship company using the facility would be assessed what we call a terminal charge [fol. 31] which consists of clerking the cargo for the vessel.

Q. And the rate for that service is established by you?

A. Is established by us and is on file in our tariff on file with the Railroad Commission. It is published in our tariff.

Q. You have a tariff that is published and filed with the Railroad Commission of the State of California?

A. We have.

Q. What other services do you have besides the clerking charge which you establish?

A. Well, we have shipside warehousing facilities available.

Q. And are there any others?

A. We do perform carloading and unloading. However, those services are on a limited scale at the present time.

Q. And those are services that you charge for?

A. We charge for those, yes.

Q. And those rates are published in your tariff?

A. Those rates are also published in our tariff.

Mr. Kilkenny: May we have that last answer read?

(The answer referred to was read by the reporter as above recorded.)

By Mr. Scoll:

Q. Are there any others?

A. No, there are no others of any importance.

Q. What do you mean, the carloading and unloading [fol. 32] services performed on a limited scale at the present time?

A. Well, all rates for carloading and unloading were published in the tariff to apply not only on State Terminal Facility 56, but also to apply on other piers on the San Francisco water front, and there are several private car unloading contractors who get the bulk of this carloading and unloading business.

Q. When you say that it is the charges that apply to carloading and unloading at other piers, you don't mean that the State Terminal, Limited, unloads and loads cars at other piers, do you?

A. Yes, we have.

Q. You have done that?

A. Yes.

Q. In other words, you were also in the private, or in the loading and unloading—strike that. I will put the question this way: You also contracted for loading and unloading at piers in San Francisco besides your own?

A. We do not contract. We perform the service as requested.

Q. Was that in connection with making up shipments to go out over your pier?

A. No, not necessarily. For example, I might state that a shipper would have some carloads of freight to be discharged, say, at Pier 31, and would request us to discharge those cars, but that cargo would have no connection with the [fol. 33] operation of the State Terminal Facilities, themselves.

Q. No part of the cargo would cross your terminal?

A. No, it would not.

Q. The tolls, dockage and the demurrage charges which are payable to the Board of Harbor Commissioners, you publish those in your tariff, do you not, as a matter of information?

A. Those are published merely for information purposes.

Q. Does the State Terminal solicit terminal business, the same as the other private terminals in the Bay Area?

A. Yes, we do.

Q. And do you consider yourself in competition with the other terminals in the Bay Area?

A. Yes, we do.

Q. Such as Howard, Encinal, Oakland?

A. That is correct.

Q. I show you a document entitled "Receipt, State Terminal Co., Ltd." You are familiar with that document, are you not?

A. Yes, I am.

Q. Is this a duplicate of a negotiable receipt that is issued by the State Terminal for storage?

A. Yes, it is.

Mr. Scoll: I would like to offer this for identification at this time, Mr. Examiner.

Examiner Basham: It will be identified as Exhibit No. 3.

[fol. 34] (Duplicate of negotiable receipt was marked for identification as "Commission's Exhibit No. 3.")

By Mr. Scoll:

Q. This exhibit No. 3 is a duplicate of a form of receipt which you issued for what service?

A. Where a shipper wishes to place some merchandise on our facility for storage while in transit and requests a receipt—in this case, a negotiable receipt—to cover that merchandise, that form is used.

Q. So the original receipt is a negotiable receipt?

A. It is.

Q. And are they registered?

A. In what way? The receipts are numbered, if that is what you mean?

Q. Yes.

A. Yes.

Mr. Scoll: I would like to offer this for the record at this time, Mr. Examiner.

Examiner Basham: It will be received.

Mr. Kilkenny: Is that offered in evidence now?

Mr. Scoll: That is offered in evidence now, yes.

(The duplicate of negotiable receipt, heretofore marked for identification "Commission's Exhibit No. 3", was thereupon received in evidence.)

By Mr. Scoll:

[fol. 35] Q. Does State Terminal publish a warehouse tariff?

A. No, we do not. All rates dealing with our warehousing operations are dealt with in our tariff.

Q. So that the rate for the storage under which that receipt is issued is published in your tariff?

A. The rates for handling and storing, yes.

Q. Handling and storage?

A. Yes.

Q. Now, State does not hold a license of public convenience and necessity, which is required of warehouses under California law in cities of 150,000 and over, does it?

A. Well, our facility is not considered a warehouse.



Q. My question is, "You do not hold a warehousing license?"

A. No, we do not.

Mr. Vaughan: What was that last question? He said a "Warehouse license"?

Mr. Scoll: Yes; a license of public convenience and necessity.

Mr. Vaughan: Yes.

By Mr. Scoll:

Q. Now, do you actually receive for your own use any of the charges for the storage under that receipt?

A. For storage, no. Our storage is assessed and collected by the Board of State Harbor Commissioners.

Q. Do you collect it for them or do they collect it directly? [fol. 36] A. If the shipper is on the approved credit list of the Board, the Board bills the shipper direct. But if the shipper is not known to the Board we collect from the shipper, and, in turn, reimburse the Board.

Q. And under your arrangement with the Board you are responsible for the payment of those storages, those storage charges?

A. We are, yes.

Q. So that if the shipper were not on the credit list and you were unable to collect the charges from him, you would have to make them up yourself?

A. We would.

Q. Now, does the Board of Harbor Commissioners compensate you for the storage service?

A. No. The entire amount of the storage is retained by the Board.

Q. Who is liable to the shipper, the consignee, for loss or damage of the goods?

A. In our case the State Terminal would be responsible.

Q. You are responsible?

A. We are responsible.

Q. And so that if there were damage to the goods that were stored there, even though such damage were not the result of any act of any employee of State Terminal, nevertheless State Terminal would have to make the damage good to the owner of the goods; is that correct?

[fol. 37] A. That is correct.

Q. Does State Terminal handle freight for all trades?

Mr. Kilkenny: Pardon me? I did not get that question.

Examiner Basham: Read it, please.

(The pending question was read by the reporter as above recorded.)

By Mr. Scoll:

Q. That is, coastwise, intercoastal, offshore and foreign?

A. With the exception of coastwise, we handle freight for practically all trades.

Q. Is there any particular reason why you don't handle coastwise or just that there isn't any?

A. In San Francisco the coastwise lines in all cases maintain their own piers.

Q. Is State Terminal a member of the Marine Terminal Association of California?

A. We are.

Mr. Scoll: That is all for the moment.

Examiner Basham: Any questions?

Mr. Kilkenny: May I have just a moment?

Cross-examination.

By Mr. Kilkenny:

Q. Mr. Gerini, I think you in referring to the fact that your company furnishes loading and unloading services at other piers when requested, you stated that that was the [fol. 38] only charge you made at other piers; is that correct?

The Witness: I didn't understand your question.

Mr. Kilkenny: Read the question.

(The pending question was read by the reporter as above recorded.)

A. Well, I understood that question to mean car loading and car unloading.

By Mr. Kilkenny:

Q. Yes. And that is the only service you charge for at other piers?

A. Unless I might make this statement: That if for some reason we were not able to berth a vessel at our present facility, the Board will assign us a pier on the outside and we will perform our terminal service at that pier.

Q. That is, you will perform all of the services of which you have spoken at the other pier?

A. That is correct.

Q. But as a general rule, when you perform earloading and unloading services at other piers, that is merely a service that you give in the same way that any other private unloader undertakes to perform?

A. That is right, except that we are really in direct competition for private unloading and loading contractors for that particular service.

Q. And that is merely incidental to your general business?

[fol. 39] A. It is merely incidental.

Mr. Kilkenny: That is all.

Redirect examination.

By Mr. Scoll:

Q. To what extent do you perform services at other piers, which you have just described?

A. Do you refer to—

Q. (Interrupting) With reference to the questions just asked you by Mr. Kilkenny.

A. Oh, where I mentioned that we might put a boat at an outside pier?

Q. Yes.

A. In that case we'd perform only the terminal service consisting of the checking of the cargo. We would perform no warehousing.

Q. I understand. Do you furnish that type of service very often?

A. Only if congestion develops on the terminal facilities where we are unable to berth a vessel; why, then we must call on the Board for an additional outside berth.

Q. How often does that happen?

A. Usually in the fresh fruit season sailings are quite frequent, and since the second floor of the Facility 56 building is devoted to State Refrigeration Terminal, quite often

vessels loading at that refrigeration terminal have the [fol. 40] berths occupied and we are then obliged to seek an outside berth for our regular vessels.

Q. And they allow you to use other berths under specific additional assignments, or is that under the general assignment which you ordinarily hold?

A. Well, it's,—I guess technically you could call it a new assignment in each case for that one vessel. In other words we are obliged to pay office rent at whichever pier we receive this vessel.

Q. But you pay only office rent?

A. Just for the period that we are handling the vessel.

Q. Did State make out a special assignment to you every time that happened?

A. No. That is usually requested either by phone or by letter for it, and the assignment is made—is usually made by phone. There is nothing written.

Mr. Scoll: That is all.

Examiner Basham: You are excused.

(Witness excused.)

Mr. Scoll: Mr. Day McCrone?

(No response.)

By the way, Mr. Examiner, the record should show that both Mr. Gates and Mr. Gerini were subpoenaed by the Commission. Mr. McCrone is not here? (No response.)

Mr. McCrone was also subpoenaed to appear this morn- [fol. 41] ing. We will have to take him later.

Mr. Gates, will you take the stand again, please?

---

MARK H. GATES was thereupon recalled as a witness for the Commission and, having previously been duly sworn, further testified as follows:

Direct examination.

By Mr. Scoll:

Q. You have been previously sworn, Mr. Gates?

A. Yes.

Q. When were the assignments to Golden Gate Terminals and State Terminal made, do you recall?

A. Well, I think the—I am only guessing—State Terminal was made, I think, in about '31 to this particular operator, and the Golden Gate Terminals, I believe it was in '34. I am not sure of the dates.

Q. And when was the Islais Creek assignment made?

A. I don't remember that. It was made a long time before I went to work for the Board. I don't remember the dates.

Q. Now, no other assignments were made to Terminal Operators besides these three?

A. No, that's all.

Q. Now, except for Islais Creek, which assignment you say was made some time ago, was it the policy of the Board of Harbor Commissioners to assign space only to steam- [fol. 42] ship lines, except for these two?

A. That was the general policy.

Q. That was the policy up through 1931 when the State assignment was made?

A. No. The Pier 56 was assigned to a terminal operator previous to the assignment to the present operator—previous to the assignment to the present operator.

Q. When was that?

A. Well, that was also made before I went down to the Harbor but it was, I should say, in the late '20s.

Q. Now, you say that except for these assignments it has been the policy of the Board to assign space only for steamship lines?

A. That's right.

Q. Why was the change in policy made with respect to these terminals?

A. Well, there were certain terminals established on the East Bay who perform similar services and, as a matter of competition, it became necessary for the Board to establish these terminals on the San Francisco side.

Q. Will you describe briefly, but in a little more detail, just what competition it was that you had to meet?

A. We had to meet competition where certain shippers desired to concentrate the cargo at shipside for outgoing movements rather than bring it from outlying warehouses [fol. 43] to the ship.

Q. In other words, your East Bay competitors forced you to devise some way of avoiding split delivery and the switching charges; is that it?

A. Well, I don't quite understand your question as to what effect that has on the situation.

Q. We will get at this this way:—

A. It was more a matter of concentration of cargo at shipside.

Q. Now, let us get at it this way: The East Bay Terminals, if you can state this within your knowledge, serve all trades, do they not?

A. Yes.

Q. So that if a shipper who uses an East Bay Terminal has goods to go out intercoastally and coastwise and off-shore or foreign, he can move all those goods to the one terminal?

A. That's right.

Q. Prior to the establishment of the terminals in San Francisco, was that possible in San Francisco?

A. No, because each particular line had space of its own at some pier.

Q. So you were faced with a situation where you, in order to compete with the East Bay, had to provide similar facilities?

A. That's right.

Q. Was low demurrage rates on the East Bay a factor [fol. 44] in the letting of these terminals?

A. The demurrage rates that were put into effect by the Board were the same in most cases as those in effect in the East Bay terminals.

Mr. Scoll: Read that answer, please.

(The answer referred to was read by the reporter as above recorded.)

By Mr. Scoll:

Q. You mean you put rates into effect to meet the East Bay competition?

A. That's right.

Mr. Vaughan: I understand, Mr. Scoll, that you are going into the question more fully at a later time?

Mr. Scoll: Yes, I am.



Mr. Vaughan: Do I understand that at that time we will have the actual rates produced?

Mr. Scoll: Yes.

By Mr. Scoll:

Q. Does the Board of Harbor Commissioners today absorb any split delivery and switching costs in order to meet East Bay competition?

A. It may absorb—yes, subsequent switches on the State Belt Railroad.

Q. Will you explain briefly why it is necessary for the Board to make such absorptions?

[fol. 45] A. Well, a carload of freight may come from an outside district, a certain portion of that to be shipped from one pier and the balance of it to be shipped from another pier and perhaps in another trade. It is necessary to, because of the fact that the Port of San Francisco is a major port and because we can't berth all the ships at one berth and at one pier—it was necessary for us to absorb those switches to compete with the terminals on the other side of the Bay where all of the cargo is assembled in one place.

Q. Do you similarly absorb any split delivery costs?

A. Very little; very little.

Q. Where?

A. At the State Terminals there are some absorptions. They amount to very little.

Q. And those are absorptions by the Board?

A. Yes.

Q. Now, have these assignments to State and Golden Gate been filed with the Maritime Commission under Section 15 of the Shipping Act of 1916?

A. Not to my knowledge.

Mr. Scoll: That is all.

Cross-examination.

By Mr. Kilkenny:

Q. Mr. Gates, with reference to the establishment of the terminals, is it a fact that they were established to give a [fol. 46] needed service to shippers?

A. I don't know that I can answer that question except to say that the Port of San Francisco has always given all

of the services that were needed in this particular district.

Q. Well, some of those services that you have spoken of were not given prior to the time the East Bay Terminals were established, is that right?

A. No, not that type of service.

Q. And was that type of service demanded at that time?

A. Not to my knowledge.

Mr. Kilkenny: That's all.

Redirect examination.

By Mr. Scoll:

Q. Is there any connection between the car loading and unloading charges at other terminals that Mr. Gerini referred to and the absorptions that you have just testified with respect to the split deliveries?

A. No, no connection.

Q. And switching costs?

A. No connection.

Mr. Scoll: Thank you.

Recross examination.

By Mr. Somers:

Q. I should like to ask Mr. Gates if the Islais Creek Grain Terminal was constructed and put into operation to meet a competitive situation in the East Bay?

[fol. 47] A. Well, Mr. Somers, that terminal was established a long time before I went down to the harbor and I am not familiar with the circumstances.

Q. Then we shall come down to that at a later date. About the present schedule of charges at the Islais Creek bulkhead demurrage charges, are those to meet a competitive situation in the East Bay?

A. They are to meet a competitive situation all over the country, I believe; all over this vicinity.

Mr. Somers: That is what I wanted to know.

Examiner Basham: You are excused.

(Witness excused.)

Mr. Scoll: Is Mr. McCrone here now?

Mr. McCrone: Yes.

DAY McCrone was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Would you tell the reporter your full name, please?

A. Day McCrone.

Q. Are you an official of Golden Gate Terminals?

A. Yes.

Q. What is your position?

[fol. 48] A. I am the general manager.

Q. How long have you been general manager?

A. Since the inception of the company in 1936.

Q. Golden Gate Terminals operates a terminal at Pier 45 in San Francisco, is that correct?

A. That is correct.

Q. How long has that been in operation?

A. Since 1936, the first of August.

Q. And you hold an assignment from the Board of Harbor Commissioners?

A. We do.

Q. How long have you held that assignment?

A. Since that time.

Q. Golden Gate Terminals is a private corporation?

A. It is a partnership. It is not a corporation.

Mr. Scoll: It is a partnership.

Mr. Westlake: I can't hear the witness, Mr. Examiner.

The Witness: A partnership.

By Mr. Scoll:

Q. Does Golden Gate establish, or has it established certain charges for the furnishing of the terminal services at Pier 45?

A. Yes, we have.

Q. And what are those charges?

[fol. 49] A. They are the same as generally applied around the Bay district.

Q. Just describe them a little more in detail?

A. We have a tariff on file with the State Railroad Commission here.

Q. You don't collect tolls or dockage or demurrage at your terminal do you?

A. We do not.

Q. That is collected by the Board of Harbor Commissioners?

A. That is correct.

Q. However, you publish those in your tariff as a matter of information?

A. That is correct.

Q. And the space which you rent under the assignment that you hold is confined to office space only?

A. Well, the whole terminal property is assigned to us on a 30-day lease proposition.

Q. The rent you pay, you pay only for the office, though?

A. That is correct.

Q. You solicit terminal business the same as any other private terminal in the Bay?

A. I think we do, yes.

Q. And do you consider yourselves in competition with the East Bay Terminals, such as Howard, Encinal, Oakland?

A. I think we are, yes.

Q. Do you compete with State Terminal?

[fol. 50] A. Yes.

Q. I show you a document entitled "Non-negotiable Receipt, Golden Gate Terminals."

A. Yes, that's ours.

Q. That document is issued by you?

A. That's right.

Q. This is a duplicate, is it?

A. That's the original.

Q. This is the original?

A. This is the original.

Mr. Scoll: I offer it for identification, or I will introduce it now. I will put it right in the record.

Examiner Bashman: It will be received as Exhibit No. 4.

(The Non-negotiable Receipt was marked "Commission's Exhibit No. 4" and received in evidence.)

By Mr. Scoll:

Q. To whom are such receipts issued?

A. Sometimes to banks who have loaned money on cargo; generally to the owners of the cargo that is placed on storage.

Q. In any case, it is issued to a person who owns or who has the legal right to ownership?

A. Yes.

Q. Before you issue a receipt you require proof that the [fol. 51] person owns the cargo?

A. Naturally.

Examiner Basham: These are what are known as "Warehouse Receipts?"

The Witness: That's right.

Examiner Basham: Are they negotiable?

The Witness: No. That is non-negotiable.

By Mr. Scoll:

Q. Do you issue a negotiable receipt?

A. No, we do not.

Mr. Kilkenny: What was that answer.

The Witness: No.

By Mr. Scoll:

Q. Do you publish a warehouse tariff?

A. No.

Q. Do you hold a license of public convenience and necessity under the California State Law to operate a warehouse?

A. No.

Q. The warehousing charges that are collected under that receipt are payable directly to the Board of Harbor Commissioners, are they, in most cases?

A. In every instance.

Q. Does that apply to both consignees who have established credit with the Board as well as those who have not [fol. 52] established credit, or is there a separate treatment as far as charges are concerned?

A. I wouldn't know that.

Q. You say you are the General Manager of Golden Gate?

A. Yes, also a partner.

Q. And you don't know what the arrangements are for paying the storage charges under those receipts?

A. Well, the arrangements were made with the Board of Harbor Commissioners.

Q. Do you ever collect any of the charges for the Board of Harbor Commissioners?

A. None.

Q. They are always paid direct?

A. That is correct.

Q. Does the Board of Harbor Commissioners pay you any compensation in connection with that storage?

A. None.

Q. The cargo shipments would be stored on space which you hold under assignment from the Board, is that correct?

A. I didn't get that.

Mr. Scoll: Read it.

(The question was read by the reporter as above recorded.)

The Witness: That is correct.

By Mr. Scoll:

[fol. 53] Q. But not on space for which you pay rent?

A. Well, we don't pay rent except on the office space.

Q. Who is liable for loss or damage to the goods stored under that receipt?

A. Ourselves, the Golden Gate Terminals.

Q. Have you paid loss or damage claims?

A. Yes.

Q. And, as far as you know no loss or damage claims have ever been paid by the Board on cargo stored on your premises?

A. I don't believe they have.

Q. What trades do you handle freight for?

A. All trades.

Q. That includes intercoastal, offshore and foreign?

A. That's right.

Q. And coastwise to some extent?

A. Yes, a small amount.

Q. Is Golden Gate a member of the Marine Terminal Association of Central California?

A. It is.

Mr. Scoll: That is all, thank you.



## Cross-examination.

By Mr. Kilkenny:

Q. Mr. McCrone, you have no assignment for the piers, have you?

A. Just to operate, that is all.

[fol. 54] Q. Well, have you any written assignment on Form 28?

A. I believe we have.

Q. For the whole pier?

A. I am not sure. I would have to look that up. I am not positive of that.

Q. You are not sure of that?

A. No, I am not.

Q. You have an assignment on Form 28 for your office space?

A. You are correct. That's right.

Q. Is it not a fact that you do not have any written assignment for the pier?

A. I believe you are correct. It has been so long ago since I have read that, I have forgotten.

Q. To the best of your knowledge that is correct?

A. That's correct.

Mr. Scoll: No more questions.

By Mr. Townsend:

Q. In connection with the operation of Pier 45 do you specialize in any particular types of commodities, or do you handle all commodities?

A. We handle all commodities.

Q. Is there any one or two types of commodities that you handle predominantly?

A. Yes. We handle a great deal of Oriental commodities. That is our major operation.

[fol. 55] Q. What do you mean by that?

A. Cargo going to the Orient and inbound cargo from the Orient.

Q. Does that come in by Oriental vessel and go out by coastal vessel, or does it stop here?

A. Sometimes it comes in by Oriental boats and goes out by coastal, but our volume of that is not great.

Mr. Townsend: That is all, thank you.

Examiner Basham: You are excused.

(Witness excused.)

Examiner Basham: We will have a five-minute recess.

(At this point a short recess was taken, after which the proceedings were resumed as follows:)

[fol. 56]

After Recess

Examiner Basham: I just want to announce that there will be no free copies of this transcript, and if you wish one, it will be necessary to arrange for it with the reporter.

You may proceed, Mr. Scoll.

Mr. Scoll: Mr. Merritt D. McCarl.

Mr. Kilkenny: I would like to ask a question of Mr. McCrone.

DAY McCRONE was thereupon recalled as a witness for the Commission and, having been previously duly sworn, further testified as follows:

Further cross-examination.

By Mr. Kilkenny:

Q. Mr. McCrone, under the arrangement you have with the Board of Harbor Commissioners the Board can at any time allow other vessels to dock at that pier where you do business, is that correct?

A. That is correct, yes.

Q. You have no preference?

A. No preference on assignments.

Mr. Kilkenny: That is all.

[fol. 57] Examiner Basham: You may be excused.

(Witness excused.)

Mr. Scoll: Mr. McCarl, please.

MERRITT D. McCARL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Mr. McCarl, will you tell the reporter your name.

A. Merritt D. McCarl; Traffic Manager and Assistant Port Manager of Oakland.

Q. The Port of Oakland is sometimes referred to as the Board of Port Commissioners of the Port of Oakland, is that correct?

A. That is correct, yes.

Q. How long have you been the Traffic Manager of the Port of Oakland?

A. Since its inception about 13 years.

Q. You were subpoenaed in this proceeding, were you not?

A. Yes, sir.

Q. Will you describe briefly the facilities operated by the Port of Oakland.

A. The principal terminal facilities are the Outer Harbor Terminal, Grove Street Terminal, Market Street Terminal, Ninth Avenue Terminal, Livingstone and Dennison Street [fol. 58] Piers; and the Airport, of course, comes under the jurisdiction of the Board, but I guess you are not interested in that at this time.

Q. No, I am not.

A. Also there are some leases. There is a lease arrangement with the Howard Terminal; also some lease arrangements with private lumber terminal operators.

Q. Those facilities were built by the City of Oakland, were they?

A. Yes, they were.

Q. They are managed by the Board of Port Commissioners, is that correct?

A. Yes, sir.

Q. And the Board of Port Commissioners, how are the Commissioners selected?

A. They are appointed by the Mayor, confirmed by the Council.

Q. These facilities you operate are deep water facilities that compare with any of those on the Bay, is that correct?

A. That is correct. I think they the a little better.

Q. They are designed for the accommodation of vessels that operate coastwise, intercoastal, offshore and foreign trades?

A. That is correct.

Q. The facilities which are not leased, such as Howard facilities, are operated directly by the Board of Port Commissioners?

A. Operated directly, those that are not leased; yes.

[fol. 59] Q. Does the Port publish a tariff?

A. It does.

Q. Is that tariff on file with the Railroad Commission of the State of California?

A. There is a copy furnished the Commission for this information?

Q. But it is not filed under the statute?

A. Not officially, no.

Q. Now, the Port establishes the rates and charges applicable to the terminal's services, does it not?

A. That is right.

Q. And applicable to terminal facilities which are leased as well as those which are operated?

A. Not those that are leased. Howard terminal publishes its own tariff.

Q. But the rates and charges have to be approved by the Port, do they not?

A. Not necessarily for Howard Terminal. Some of the other terminals, like Albers Brothers, follow the Port of Oakland Tariff, but I wouldn't say for sure that Howard Terminal's rates have to be approved by the Board. There is some question about that, I believe.

Mr. Jones: I think the lease will speak for itself on that.

By Mr. Scoll:

Q. What property does the Port lease to McCormick [fol. 60] Steamship Company?

A. There is just an assignment there; half of the shed area at Ninth Avenue Terminal.

Q. And that Ninth Avenue terminal is adjacent to piers that are operated by the Board?

A. The Port operates directly one half of that facility and the balance of it as a lumber terminal.

Q. When was this lease or assignment made?

A. About six, seven years ago.

Q. Excuse me. I think it was 1932.

A. 1932, yes.

Q. Do you have any other leases to steamship lines?

A. No, that is the only one. The "Assignment," I should say, instead of a "lease."

Q. I will show you a document entitled "Agreement" which purports to be an agreement made the first day of March, 1932, by and between the Board of Port Commissioners acting for the City of Oakland, and the McCormick Steamship Company. Is that the agreement under which the McCormick Steamship Line holds the Ninth Avenue pier?

A. That appears to be the correct copy.

Q. You had better look it over and make sure.

A. I see it bears initials on there and it looks very familiar. (Examining agreement.) Yes, I would say that that is correct.

[fol. 61] Mr. Jones: May I see it, please?

(The agreement was handed to Mr. Jones.)

By Mr. Scoll:

Q. That is a correct copy, is it not?

A. Yes, sir.

Mr. Scoll: I would like to offer it for identification at this time, Mr. Examiner.

Examiner Basham: It will be exhibit No. 5 for identification.

(The agreement was thereupon marked for identification "Commission's Exhibit No. 5.")

Mr. Scoll: I would like to read Clause No. 2 from this agreement into the record.

Mr. Jones. Has it been received in evidence yet?

Examiner Basham: For identification only.

Mr. Scoll: Well, would you rather I offer it now?

Mr. Jones: Yes, because I—

Mr. Scoll (Interrupting): I will offer it for the record.

Mr. Jones: Subject to my continuing objection, Mr. Examiner.

Examiner Basham: It will be received.

(The agreement referred to, heretofore marked for identification "Commission's Exhibit No. 5," was thereupon received in evidence.)

[fol. 62] Mr. Scoll: I am now reading from clause 2:

"The Steamship Company shall use said pier shed space and adjacent rear and front platforms exclusively for the purposes of carrying on its steamship operations in receiving, handling and dispatching cargo transported by such vessels as it shall own and control, or by vessels for which at the date of this agreement it is the regularly constituted shipping agent, it being provided, however that in the event that the steamship company shall desire to use any part of said space for the handling of the cargo of any other vessel or other steamship line which it shall become the agent therefore, it shall so advise the Board in writing of such intention, and exhibit to the Board such evidence as shall be necessary to establish such agency; provided, however, the steamship company shall not engage in competition with the Port of Oakland to take over any of the business it may control or handle."

By Mr. Scoll:

Q. Were you the traffic manager of the Port of Oakland at the time this agreement was executed?

A. Yes, I was.

Q. Now, you were familiar with this agreement at the time it was executed, were you not?

A. Yes.

Q. Did you see it?

[fol. 63] A. Yes.

Q. Will you state for the record, so far as you can recall, what was intended to the Port to be accomplished by that last clause I read, which I shall repeat: " \* \* \* Provided, however, the steamship company shall not engage in competition with the Port of Oakland to take over any of the business it may control or handle.?"

Mr. Jones: Just a moment, your Honor. Mr. Examiner, it seems to me that that clause speaks for itself. The intent



of Mr. McCarl, who is, after all, as I am, merely an employee of the Board, does not bind the Board. It does not bind the McCormick Steamship Company. These leases are, as of course, as a matter of law, made by the Board by ordinance. It is a legislative intent, and Mr. McCarl is not able to tell what was in the Board's mind at the time that lease was made. Furthermore, the document speaks for itself and is subject to judicial construction.

Mr. Scoll: Mr. McCarl was the traffic manager and would be most interested undoubtedly in clauses of this kind. He stated that he was traffic manager of the port at the time the lease was drawn. He is familiar with it and undoubtedly he knows what was intended to be accomplished by that clause. If he does, I would like to have him so say.

Examiner Basham: The witness should answer if he knows.

[fol. 64] A. The purpose was to restrict tonnage handled by McCormick at that facility to the tonnage that was carried by its own vessels and not to set them up as a terminal operator in competition with the Port of Oakland.

Mr. Scoll: I shall now read from the lease, Clause 4, page 2:

"(4) In carrying on its operations upon said pier, the said Steamship company shall assess and collect charges for all services performed by it at the same rates and charges as are prescribed from time to time by the regularly adopted tariff published by the said Board. Said company shall, in good faith, collect said charges from all shippers and others with whom it shall carry on its business. Nevertheless, nothing in this agreement shall be understood or construed to constitute said Steamship company as terminal operators."

I would like to read into the record Clause 31 of the lease on page 10:

"(31) In further consideration of the granting to the Steamship Company of the privilege of the use of said pier space as herein provided, the steamship company expressly undertakes and agrees that all discriminating rates and differentials against the Port of Oakland, or any of its publicly operated facilities, shall be removed from all

tariffs under the control of the company, as well as from [fol. 65] the tariffs of any steamship line or vessels for which it shall use the said pier as steamship agents, which tariff it may be enabled to control, and the said steamship company will conscientiously use its best efforts with any conference to which it may belong to place the Port of Oakland on a strict parity with the Port of San Francisco, and will endeavor to the extent of its ability to increase the amount of tonnage handled by it through the Port of Oakland according to the true spirit and purposes of this agreement."

By Mr. Scoll:

Q. Now, I will ask you what was intended to be accomplished by that last clause, which I shall quote again:

"And will endeavor to the extent of its ability to increase the amount of tonnage handled by it through the Port of Oakland according to the true spirit and purposes of this agreement."

A. That was to require them to remove any differentials against the Port and to permit tonnage which should normally pass through the Port of Oakland to move in that manner.

Q. It says "endeavor to the extent of its ability to increase the amount of tonnage handled by it through the Port of Oakland." Doesn't that have a little broader meaning than you just attributed to it?

A. Some time back there was a tendency to route traffic through more or less unnatural channels and divert cargo [fol. 66] from the Port that we felt should normally move through the Port; also in certain trade routes there were what we considered discriminatory rates against the Port.

Q. What cargo did you at that time think should normally be routed through Oakland?

A. Their headquarters being in San Francisco, there seemed to be a tendency to have cargo routed through San Francisco where they were paying rental on a facility regardless of the amount of tonnage that moved through that facility to move through San Francisco, rather than through Oakland; and also possibly some movement through other ports: Alameda, Richmond.

Q. And you thought that all of that should go through Oakland?

A. That's right.

Q. And that applied, did it not, to cargo handled not only in McCormick Steamship Line vessels, but also the vessels of any other steamship lines for which it used the terminal as agent?

A. Well, we had in mind particularly the McCormick Steamship Line. We didn't expect them particularly to handle any other vessels as agents, although that was put in there in case they did. It was used for that purpose.

Q. Does the Board have any similar agreements as this with any other steamship lines.

A. No, sir.

[fol. 67] Q. Has this agreement been filed with the Maritime Commission under Section 16 of the Shipping Act of 1916?

A. No, sir.

Q. Will you describe the facilities which the Port leases to Albers Brothers Milling Company?

A. That is an old lease of long standing. It was entered into a number of years ago and covers facilities—a facility operated by the Albers Brothers Milling Company for the making of cereals and bringing the materials into their facility to be used in the making of these cereals, and shipping them out; also for storing such materials as are used by them and shipped by them.

Q. Where is the property located?

A. The Outer Harbor area.

Q. What does it consist of?

A. It is a dock and mill, storage tanks, storage facilities.

Q. There are facilities there for berthing of vessels?

A. Yes.

Q. I show you now a printed document entitled "Notice of Intention to Make a Lease to the Highest Responsible Bidder, Covering Certain Land In or Near the Outer Harbor Area of the City of Oakland," which has written on it in ink in the upper right hand corner, "Albers Bros. Milling Co."

Mr. Jones: I will stipulate, Mr. Scoll, that that does contain the Albers' lease.

[fol. 68] Mr. Scoll: Thank you, Mr. Jones. That, then, except for the fact that it is unsigned, is the form of the lease which was signed by the Albers Milling Company?

Mr. Jones: That is true; the one presently in effect.

By Mr. Scoll:

Q. Is the Albers lease, of which this is a printed copy, now in effect?

A. It is.

Mr. Jones: I so stipulated.

Mr. Scoll: Oh, I am sorry.

Mr. Jones: It is presently in effect.

Mr. Scoll: I will offer it for the record.

Mr. Jones: Is that being offered in evidence?

Mr. Scoll: Yes.

Mr. Jones: At this time, Mr. Examiner, I must object to the introduction of this lease or of any other lease made by the Board of Port Commissioners to a person who is not within the definition "Other persons," subject to the Act in Section 15. I understand that this portion of the inquiry is directed only to Section 15. Is that true?

Consequently, any lease which the City of Oakland might have made to a shipper or a manufacturer who does not engage in furnishing terminal facilities as a public wharfinger is altogether beyond the power of this Commission in so [fol. 69] far as the requirements of filing in Washington is concerned. I understand that the only purpose for which this is offered is to show a violation of Section 15. Therefore, on the ground that it is immaterial, I object to its acceptance in evidence.

Mr. Scoll: Before the Examiner rules on that—

Examiner Basham: Which party to this lease do you contend is not a party subject to the Act?

Mr. Jones: Albers. Of course, my continuing objection on the part of the Board also runs to this. But I think that any terminal operator under Section 15 may make any agreement with the shipper that is not covered by Section 15. Section 15 relates only to the so-called Conference Agreement.

Examiner Basham: The objection will be overruled. It will be received in evidence as Exhibit No. 6.

(The printed copy of the lease referred to was marked "Commission's Exhibit No. 6," and received in evidence.)

By Mr. Scoll:

Q. I am reading to you now a clause from sub-paragraph (c) of paragraph 3 of this lease, which reads as follows:

"Lessee shall and will in good faith, and with all reasonable diligence and consistency use its best endeavors and all practical means to use the terminal facilities or said leased premises to its full capacity [fol. 70] to cooperate with lessor in securing business, traffic and shipments of freight for and through municipal terminals operated by Lessor to the end that it may aid in promoting commerce and shipping of the Port of Oakland."

I will ask you, Was the purpose intended to be accomplished by that clause the same as the similar one we discussed in connection with the McCormick lease; that is, to promote the commerce of the Port of Oakland?

A. In a general way. That is a general provision and it wasn't to be intended to have them use their influence other than the routing of their own cargo to use their reciprocity, purchase power, and that sort of thing to try to influence tonnage through the Port.

Mr. Scoll: I have no further questions of you at this moment, Mr. McCarl.

Mr. Examiner, I want to recall Mr. McCarl in a few moments, but I would like now to put on another witness.

Mr. Jones: I would like to ask just one or two questions, Mr. Scoll.

Cross-examination.

By Mr. Jones:

Q. Mr. McCarl, the Board of Port Commissioners of the City of Oakland is a department of that city, is it not?

A. Yes, sir.

[fol. 71] Q. And the city, of course, is a municipal corporation of the State of California?

A. Yes.

Q. The powers of the Board of Port Commissioners are set up, are they not, in the charter of the city of Oakland?

A. Yes.

Q. Could you tell this Commission, Mr. McCarl, how leases are made by the Board of Port Commissioners?

A. Through public bidding.

Q. And after the bids are received what happens, if you know?

A. The lease is allotted to the highest bidder; the highest responsible bidder.

Q. By what kind of action by the Board? In other words, by ordinance, resolution, motion, or what?

A. By ordinance of the Board.

Mr. Jones: That is all.

Mr. Connolly: Mr. Examiner, in order to protect any right that might accrue to Albers Brothers Milling Company later on when briefs are filed, I would like to ask your permission to join in the objection of Mr. Jones in regard to this particular lease which was offered as exhibit No. 6. I understand the objection has been overruled.

Examiner Basham: Yes.

Mr. Connolly: But may that be granted?

Examiner Basham: It will be noted.

(Witness excused.)

[fol. 72] Mr. Scoll: Mr. Edwin Doyle.

Mr. Connolly: Mr. Doyle is our San Francisco Manager; that is, for Albers Brothers Milling Company. He is not familiar with the dock operations in Oakland, and I asked Mr. Slade here for permission to substitute for Mr. Doyle.

C. S. CONNOLLY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. What is your name, please?

A. C. S. Connolly.



Q. What is your occupation, or what is your position with Albers Milling Company, Mr. Connolly?

A. Western Traffic Manager.

Q. And how long have you held that position?

A. Well, I think the last six or seven years. I was traffic manager here before that time and we had an amalgamation of certain companies, and then I was assigned the title of Western Traffic Manager and moved to Seattle.

Q. Are you now located in Seattle?

A. Yes.

Q. Are you familiar with the operations at the terminal [fol. 73] and other facilities that are operated by Albers Milling Company in the Port of Oakland?

A. I am.

Q. Will you describe the operations that take place at that facility, briefly?

A. The facility is largely a private facility devoted exclusively to the handling of grains and other commodities usually handled by a large milling company. We have machinery there for the manufacture of various feeds, cereal food preparations, flour and machinery incident to general milling operations.

Q. And those milling operations take place on the facility which you lease from the Port of Oakland?

A. That is correct.

Q. Have you similarly handled inbound and outbound freight of your own at that facility?

A. We do.

Q. That is, freight of the Albers Milling Company?

A. Yes, sir.

Q. Now, in addition to Albers Milling Company freight is the freight of other concerns also handled at that terminal facility?

A. At the present time there is one other concern. I wouldn't say handle their freight through the facility, but that concern rents two storage tanks from the Albers Brothers Milling Company at a fixed rental per month, and they [fol. 74] bring into the wharf adjacent to those storage tanks, which are really not—I wouldn't say that they are on the wharf. They are located on the ground east of the facility itself. They berth their ships in such a position so that liquid soda can be discharged from the ship in the tanks.

Q. And so that they use the dock facility for the discharge of that soda?

A. Yes. That's necessary in order to tie up so they can—

Q. (Interrupting:) What is that company? What is the name of that company?

A. Well, I wonder—not that I don't want to put it in the record here, but it is more or less a private—we are not operating as a public utility to any extent, and it is really a private transaction between Albers Brothers Milling Company and this other company, and I don't know to what extent they might object to my divulging this information. I would be glad to give it to you “off the record.”

Q. Well, maybe we will come back to it. Will you identify Interstate Terminals?

A. About seven or eight years ago the corporation was organized under the laws of the State of California and that corporation still exists, although it is inoperative at the present time. The name of the corporation is Interstate Terminals Limited.

[fol. 75] Q. Now that Interstate Terminals, Limited, was organized by Albers Milling Company?

A. Well, I believe that's a correct statement. The incorporators were various people connected with the Albers Brothers Milling Company.

Q. And that corporation was organized subsequent to the lease which has been introduced as exhibit No. 6, subsequent to the time that lease was made?

A. Do you happen to have the date on that lease?

Mr. Jones: 1934.

The Witness: I forgot that date.

Mr. Jones: 1934.

The Witness: Yes. The Interstate Terminals, Limited, was incorporated prior to the time of this lease.

By Mr. Scoll:

Q. Who holds the stock of Interstate Terminals, do you know?

A. Yes.

Q. Who does?

A. Well, Albers Brothers Milling Company hold, I think, all but four or five directors' shares.

Q. Now, you say that Interstate Terminals, Limited, is inoperative at the present time?

A. That's right.

Q. Does it still hold its charter of incorporation?

A. It does.

[fol. 76] Q. As a corporation?

A. It does.

Q. Has it been dissolved?

A. It has not.

Q. What I mean by "Inoperative," I mean that Interstate Terminals, Limited, as such, has no operating organization. They perform no functions at the present time whatsoever.

Q. What functions did it perform before it became inoperative?

A. Well, it made a feeble effort to go into the terminal business in Tacoma and, oh, it lasted about a year there. It operated rather extensively at Portland, Oregon. Our legal staff in the east thought that it would be better to operate in Oregon using the name "Interstate Terminals." That is, Albers Brothers Milling Company do a direct operation through the name "Interstate Terminals?" and that is what they are doing there now. So the corporation, as such, no longer operates.

Q. Does Interstate Terminals, Limited operate at the facilities that are leased by Albers Milling Company?

A. No, sir.

Q. Never?

A. No, sir.

Q. Does any other company whose stock is owned or controlled by the Albers Company operate a terminal facility on this property?

[fol. 77] A. Well, I don't know how to answer that question. I want to be absolutely honest with you, of course. The Albers Brothers Milling Company is owned in turn by the Carnation Company, and I imagine that any operation over on that property would be for one of those corporations.

Q. Then let me ask you this: Are any public terminal facilities operated at this property that is under the Albers Brothers lease?

A. No, they are not. We do not hold ourselves out to the general public in any way, shape or form to accept business.

Q. Now, what concerns besides the Albers Brothers Milling Company and Carnation do you handle cargo for over this facility?

A. The one concern which I said I would be glad to give you the name "off the record."

Q. That is the only one?

A. Yes, sir. There was, I believe, an instance where one grain company had some corn here some time ago and they put in our facility. It was a thousand tons, and we had already purchased 700 tons of that corn. It was more or less, I would say, a private transaction.

Q. And no terminal services have ever been rendered at that facility for the general public at any time that Albers has held this lease?

A. Well, I examined yesterday when I arrived here. I examined the records that were available. Those records [fol. 78] commenced with 1937. I will say this: That I recall one or two instances of a strictly private nature. I recall one instance of a large block of canned goods. We had some space there. That was about eight years ago. We had some space and we took those canned goods in on a storage basis. We charged so much for it, with the approval of the Court.

Q. What was the occasion for that?

A. The occasion was simply the fact that we had space there at the terminal not being used at that particular time for grain and other commodities, and we were approached by another party who wanted to store some canned goods, and we took it in.

Q. Were you approached by them, or did you approach them?

A. No, we were approached by them.

Q. Are such requests frequently made to you?

A. Very infrequent.

Q. But when such requests are made, if you have the space, why, you rent it out to them, do you?

A. Well, I would say that "Yes; we would." If we had the space we would try to rent it with the approval of the Port Commission.

Q. Do you get the approval of the Port Commission every time you rent out storage space or use your facilities for the unloading or loading of cargo of other concerns?

A. We do, because the lease provides that we shall get permission before we can handle any goods other than our [fol. 79] own goods.

Q. When was the last time you used the facilities for some other concern than Albers or its affiliates?

A. Well, I believe the last time was in January of this year when some of the liquid soda was discharged into the tanks.

Q. Do you have a contract with those people?

A. Well, —

Q. (Interrupting:) A written contract?

A. I don't believe so, no. I don't believe we have any written contract: I haven't made a search, however, for any such document. But my understanding is that we merely agreed to rent the tanks for so much a month.

Q. Well, is that —

A. (Interrupting:) From month to month.

Q. Is that just an oral arrangement?

A. I don't know whether there are any letters or any thing of that kind in the files or not. I didn't make the arrangements myself.

Q. Would you find out for us?

A. Yes.

Q. And insert it in the records at a later time?

A. Yes.

Examiner Basham: We shall adjourn now until two o'clock.

[fol. 80] (Whereupon, at 12:30 p. m., a recess was taken until 2:00 p. m.)

[fol. 81] AFTERNOON SESSION 2:00 P. M.

C. S. CONNOLLY resumed the stand and further testified as follows:

Direct examination (Resumed).

By Mr. Scoll:

Q. Now, Mr. Connolly, when cargoes for accounts others than Albers Brothers are discharged at the wharf, are service, dockage and tolls assessed as required by the tariff of the Port of Oakland?

A. They are.

Q. Who bills the shippers or consignees and the line for those charges?

A. We bill the charges against the consignee or whoever is liable for the charges, and then we——

Q. (Interrupting:) Who do you mean by "we"?

A. Albers Brothers Milling Company.

Q. You mean, Albers themselves bill the service charges against the vessel?

A. Well, we bill whatever the appropriate charge is; the tolls, the dockage and any service charge. We will bill that service charge against the vessel and bill the wharfage and tolls, or the dockage, against the vessel, and the tolls against the consignee.

[fol. 82] Q. Now, you are sure that the billing is done directly by Albers?

A. Yes.

Q. Was it formerly done by Interstate Terminals?

A. Well, probably anticipating what you have in mind, I explained that we formed a corporation in California known as the Interstate Terminals, Limited.

Q. Why did you form that corporation?

A. Well,——

Q. (Interrupting:) Let me ask it this way: Albers Milling Company is not a California corporation, is it?

A. No, sir.

Q. And Interstate Terminals, Limited is a California Corporation?

A. That's right.

Q. Now, as a matter of fact, weren't the charges, service, dockage, toll charges, actually billed by Interstate to the respective carriers and consignees?

A. Well, now, what period of time are you discussing?

Q. Well, I am discussing the period of time when Interstate Terminals, Limited, was operating.

A. I testified that they never operated here in California.

Q. So that at all times all those charges have been billed directly by Albers?

A. Yes. But I want to explain something here, because undoubtedly you have some information that you are predicting these questions upon. As I started to say, the corporation known as Interstate Terminals, Limited, was incorporated in California and at one time we had various forms printed and it may be that at some time or another charges were billed on these particular forms. I don't



deny that. In fact, I believe they were so billed. But I think that the correct way would possibly have been to use stationery of Albers Brothers Milling Company since Interstate Terminals, Limited, was not operating in any way here as a corporation.

Q. Well, now, when cargoes are discharged at Albers' wharf for other accounts, who performs the clerking service involved in the discharge?

A. At the present time on this liquid soda, of course, there is no clerking and the same would be true on bulk grain. On any other cargo that may have been discharged there in the past, as far as I know, the Steamship Company itself did the clerking. We may have put a checker on at their request or something of that kind.

Q. Would Albers furnish any service whatever in connection with the discharge of a vessel that was unloading for another account than Albers?

A. They would furnish lights and water for the vessel.

Q. But no employees engaged in handling the cargo?

A. No. We couldn't do that because our men can't do that kind of work.

[fol. 84] Q. Well, now, when a vessel calls at Albers, occasionally—strike that out, please.

When a vessel calls to discharge cargo at Albers' wharf for Albers Company, does it occasionally happen that they would sometimes discharge other cargoes for other accounts at the same time?

A. I believe there have been one or two instances in the last two years. In one instance a boat came to the dock with corn in bulk, which we were the consignee of, and—well, I wasn't there, but I have been informed that it was necessary to take out a small amount of freight in order to get at the corn, and that we were allowed to do that after obtaining permission from the Port of Oakland authorities.

Q. How often do instances like that occur?

A. As far as I know, there have been but two in the last two years.

Q. Now, Albers has bulk handling facilities for handling grain?

A. Yes, sir.

Q. Well, now, have you ever handled grain for any other account than your own?

A. Yes, we have.

Q. For whom?

A. I believe the last two consignments were handled for [fol. 85] the Continental Grain Corporation.

Q. Now, are the usual service charges, dockage charges, assessed against the vessel in those cases?

A. They are.

Q. Is there a charge assessed against the cargo, too, such as a toll?

A. Yes, there is a toll assessed against the cargo.

Q. When was this Continental assignment handled?

A. Well, it has been within the last six months, I think; very recently.

Q. Do instances like that occur very often?

A. Well, in my examination of the records for three years, those two shipments for the Continental Grain Company were the only two I found.

Q. And the charges are billed and collected by Albers?

A. That's right.

Q. Have you ever had occasion to consider whether Albers Brothers Milling Company was authorized under the laws of the State of California to handle cargoes for other concerns than itself at this wharf?

Mr. Jones: Mr. Examiner,—

A. (Interrupting:) I don't understand the question.

\* Mr. Jones: (Continuing:)—that calls for a conclusion of the witness.

Mr. Scoll: I did not ask him for a conclusion. I asked [fol. 86] him if he ever had occasion to consider.

Mr. Jones: What is the purpose of it? To get at the conclusion, is it not?

Mr. Scoll: I will get at it another way.

By Mr. Scoll:—

Q. Are you familiar with the report of the California Railroad Commission in case No. 4090?

A. I am.

Q. Have you had occasion to read the portion of that which relates to Interstate Terminals and Albers Milling Company?

A. I haven't read it in the last year, but I think about two years ago or a year or so ago I read it.

Q. Let me show you Decision No. 29171 of the California Railroad Commission in Case No. 4090, page 15. I will

ask you to just look over the statement that is made there with respect to Interstate Terminals and Albers Brothers Milling Company.

A. (Reading decision.)

Q. Are the statements made in the decision of the California Commission correct as to stating the facts?

A. No.

Q. In what particular are they wrong?

Examiner Basham: What are you talking about, Mr. Scoll?

Mr. Scoll: I am talking about the decision of the California Railroad Commission, which I will offer in evidence at this time.

Examiner Basham: Do you want to offer it now?

Mr. Scoll: Yes. I will offer it at this time and then the witness can testify from it.

Mr. Townsend: May I ask before that is passed upon, what is the purpose of the offer? For what purpose is this decision being offered at this time?

Mr. Scoll: To establish the relations between Interstate Terminals and Albers Brothers Milling Company.

Mr. Townsend: That is the only purpose?

Mr. Scoll: That is the only purpose.

Mr. Townsend: In other words, you are really offering, then, only that portion of the decision dealing with Interstate Terminals and Albers Brothers Milling Company?

Mr. Scoll: That is right. I might say that the decision will probably be used in connection with other issues in the case, and when we come to them we will refer to the specific parts of the decision. At that time, if you have any comments or objections that you want to make, we can handle them then.

Mr. Townsend: That is what I want clearly understood. In other words, at this time we are not passing upon the admissibility of any portion of this decision except in so far as it relates to Interstate Terminals and Albers Brothers [fol. 88] Milling Company?

Mr. Scoll: That is right.

Mr. Townsend: May that be understood, Mr. Examiner?

Examiner Basham: Yes. That will be received as exhibit No. 7.

(The decision referred to was marked "Commission's Exhibit No. 7," and received in evidence.)

Examiner Basham: I wish you would identify the page in the record here to which you are addressing your questions.

Mr. Scoll: I believe I have, but I will identify it again.

By Mr. Scoll:

Q. Mr. Connolly, will you state in what respect the statements of the California Commission on page 15 of the decision referred to and introduced as exhibit No. 7 are incorrect?

A. In my opinion, the decision does not interpret my testimony in that case correctly. You, by offering that in evidence, wish to establish in the record here that Albers Brothers Milling Company handled the goods of their own—that is, where they were either shipper or the consignee—and that Interstate Terminals handled goods belonging to others. There is one commodity mentioned there: Soda Ash, and that the charges were billed by Interstate Terminals.

Now, I call your attention to the fact that the corporate [fol. 89] name "Interstate Terminals, Limited," is not used in that decision and Interstate Terminals is merely a name that has been used to identify the terminal over there. There are no employees of Interstate Terminals whatsoever there, nor were there any employees of Interstate there at the time mentioned in this decision. Every transaction that occurred was handled by employees of the Albers Brothers Milling Company, on the payroll of Albers Brothers Milling Company; and there was but one corporation operating that property, and that was the Albers Brothers Milling Company.

As I admitted here in the record, there is a possibility that stationery which had been printed at the time this other corporation was organized was being used in billing those charges. We had stationery printed at that time for a number of places, Oakland and Portland and Tacoma, but the corporation never functioned in Oakland.

Q. All I am trying—

A. (Interrupting:) And when I say "corporation," I mean the Interstate Terminals, Limited. And as far as Interstate Terminals is concerned in that decision, it merely means Albers Brothers Milling Company, because that is the only corporate identity or the only person of any kind, natural or artificial, that was over there on that property.

Q. All I am trying to get at, Mr. Connolly, are the facts.

A. That is what I am trying to give you, too. I have nothing to hide. I want to help you if I can.

[fol. 90] Q. But did Albers do business under the name of Interstate Terminals Company at any time? Did it use that name for any of its operations?

A. Only to the extent of billing those charges on this stationery which was printed and, if I remember correctly, that stationery contained the name "Interstate Terminals, Limited," as far as that goes.

Q. But it does not do it any longer? Albers does not do that any longer?

A. I wouldn't say that. For all I know, I haven't investigated personally to see whether these charges that I speak of having been billed by Albers Brothers Milling Company are actually on a bill head of Albers Brothers Milling Company, or whether they may be on some of these old bill heads of Interstate Terminals, Limited.

Mr. Scoll: I think that is all I have, Mr. Connolly.

Examiner Basham: Any questions? (No response.)

You may be excused.

(Witness excused.)

Mr. Scoll: Mr. McCarl, please.

[fol. 91] Merritt D. McCarl was thereupon recalled as a witness for the Commission and, having been previously duly sworn, further testified as follows:

Direct-examination.

By Mr. Scoll:

Q. You have been sworn, have you not, Mr. McCarl?

A. Yes, sir.

Q. Will you describe briefly the facilities of the Port of Oakland that are leased to the Howard Terminal?

A. The outer portion of the pier structures on the quay wall facility at the foot of Market Street, they are owned by the city and the city has entered through the Port Department a lease arrangement for the operation of those facilities with the Howard Terminal. The quay wall portion is on a year to year basis, and the other two leases are long time standing. The City gets a portion of the dockage

and tolls from the pier leases, and all the dockage and tolls from the quay wall facilities.

Q. I will show you a document which purports to be an agreement between the city of Oakland and the Howard Company. Will you look that over and tell me whether that is the agreement under which the Howard Terminals hold with the city of Oakland?

Mr. Jones: What date is that? Is that the 1914 agreement?

[fol. 92] A. 1914, yes. (Reading agreement.) It appears to be a true copy.

By Mr. Scoll:

Q. Now, that is the lease which they now hold under, is that correct?

A. Yes. I think that is correct.

Mr. Scoll: I would like to offer this in evidence.

Examiner Basham: It will be received as exhibit No. 8.

(The agreement referred to was marked "Commission's Exhibit No. 8," and received in evidence.)

Mr. Scoll: I would like to read into the record at this time Clause (b) under Paragraph 3 of the lease which has just been admitted as exhibit No. 8.

"(b) For the use of said wharves and slips said Howard Company shall pay to the City of Oakland tolls, wharfage and dockage at the rates charged by the city of Oakland at its other municipally owned wharves in the City of Oakland."

By Mr. Scoll:

Q. Is it the intention of the City of Oakland through that clause to provide that Howard shall charge the same rates as are charged by the Port of Oakland?

Mr. Jones: Just a moment, please. Mr. Examiner, the record shows that this lease was made in 1914. Mr. McCarl [fols. 93-142] was not employed by the Port at that time and would have no understanding at all as to what the intention of the City and the Howard Terminal was at that time.

Mr. Scoll: I will put the question another way.



By Mr. Scoll:

Q. As a matter of fact, are the rates and charges that are charged at the Howard Terminal the same as those charged by the Port of Oakland?

A. I will say that they are practically identical. I think there is a slight difference between them in the dockage but they are intended to be on a uniform basis. The reason for that slight difference, I think, is because we have some dockage that runs into longer periods, whereas the Howard Terminal does not.

Q. This lease has never been filed with the Maritime Commission under Section 15 of the Shipping Act of 1916, has it?

A. No.

Mr. Scoll: That is all.

[fol. 143] GEORGE H. BUSHNELL was thereupon called as a witness, for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By Mr. Scoll:

Q. Will you tell the reporter your full name?

[fols. 144-146] A. George H. Bushnell, General Agent, McCormick Steamship Company, Oakland.

Q. What are your duties, Mr. Bushnell?

A. Supervisory, I would say, principally.

Q. You supervise the operations of Ninth Avenue?

A. I do.

Q. How long have you occupied that position?

A. Well, approximately four years.

[fols. 147-156] Cross-examination.

[fol. 157] By Mr. Townsend:

Q. On this exhibit that has just been discussed, Exhibit No. 15, you show certain charges paid, and among them are drayage service charges, tolls, etc. Would you please state whether the service charges that you show are service charges paid to Encinal Terminals?

A. Yes. That is in connection with the column.

[fol. 158] Q. Yes, that is what I mean. Were any service charges paid for the handling of the cargo over the 9th Avenue dock?

A. Service charges were paid by the vessel to ourselves, billed to the vessel.

Q. So for this particular charge there was a service charge paid to Encinal Terminals and a service charge paid for the use of the 9th Avenue dock?

A. It was paid to ourselves.

Q. It was paid to yourselves. But I want to make clear that on the same cargo there was a duplicate charge paid, one to yourselves and one to the 9th Avenue dock?

A. That is correct.

Q. With respect to the service charges that are paid to yourself, as you have stated, at the 9th Avenue dock, are those retained by the McCormick Steamship Company or turned over to the Port of Oakland?

A. Retained by the McCormick Steamship Company.

Q. With respect to the tolls, is the situation the same, namely, that there is a toll paid to Encinal Terminals and another toll paid for the use of the 9th Avenue dock?

A. I know there is as far as 9th Avenue is concerned. I am not absolutely certain as far as the other terminal is concerned.

Q. Can you ascertain the fact in that connection and let us know later?

[fol. 159] A. Yes, I can.

Q. Is the toll that is collected for movement of cargo over the 9th Avenue dock retained by the McCormick Steamship Company or paid eventually to the Port of Oakland?

A. It is paid to the Port of Oakland.

Q. Were any other terminal charges paid to Encinal Terminals in addition to the service charge and the tolls in connection with this cargo that was drayed from Encinal Terminals to the 9th Avenue dock?

A. Any other charges?

Q. Besides the service charge and the tolls.

A. Not to my knowledge.

Q. We have been discussing the situation with respect to the charges paid to Encinal Terminals in connection with cargo drayed from Encinal Terminals to the 9th Avenue dock. Would the situation be the same with respect to the

payment of charges to the Port of Oakland at the Oakland Outer Harbor, namely, a duplicate payment of the charges in connection with the service charge?

A. Yes, but not insofar as tolls.

Q. Not insofar as tolls. You show on your Exhibit 15 certain shipments that were drayed from the Oakland Outer Harbor to the 9th Avenue dock and in one instance you show cargo of "Libby, McNeill and Libby," does it not?

A. Right.

[fol. 160] Q. And in the other case you show "Rosenberg Bros." Was that cargo obtained on the dock; that is the transit shed at the Outer Harbor of Oakland or was it obtained in some facility operated or leased by Libby or Rosenberg?

A. In the transit shed.

Q. And you will check that one point of whether Encinal Terminals received any tolls?

A. I will.

Mr. Townsend: Thank you.

Redirect examination:

By Mr. Scoll:

Q. Mr. Bushnell, you mentioned a duplicate payment of service charges on the Outer Harbor cargo. When you say "duplicate payment," you mean one is made to Oakland and the other is made by McCormick to itself?

A. Right.

Q. In other words, it is a bookkeeping transaction, it is not an actual payment to anybody?

A. Insofar as our—

Q. (Interrupting) Insofar as the McCormick payment is concerned, it is a bookkeeping transaction, is it not?

A. Well, unless it is a chartered vessel.

Q. I am talking about service charge.

A. Service charge would be to ourselves, yes.

Q. So it would be a bookkeeping transaction?

[fol. 161] A. I would say it would.

[fol. 162] Mr. Townsend: I have some questions, please.

**Recross-examination.**

**By Mr. Townsend:**

Q. Mr. Bushnell, Mr. Seoll has referred to this payment of the service charge for the handling of the cargo over the 9th Avenue dock as a bookkeeping transaction or something to that effect as far as McCormick Steamship Company is concerned. Is it not a fact that the McCormick Steamship Company sometimes acts as agent for other Steamship companies in the handling of vessels at that 9th Avenue dock?

A. No.

[fol. 163] Q. Well, are there any vessels owned by the McCormick Steamship Company?

A. I am not certain of that. I am not familiar with our accounting procedure. You may say that this is a bookkeeping entry. I don't know whether it is or not.

Q. Well, is it not a fact that the McCormick vessels are chartered?

A. No.

Q. There are some chartered, are there not?

A. Yes.

Q. Insofar as those vessels are concerned—that is, the chartered vessels—aren't these charges the service charges against the vessel?

A. Yes.

Mr. Geary: You are referring now to Exhibit 15?

Mr. Townsend: Yes.

The Witness: Yes, they are against the vessel.

**By Mr. Townsend:**

Q. They are against the vessel?

A. Yes.

Q. And that would be true in the case of a chartered vessel?

A. I believe so.

Q. Do you know the basis of the charter arrangements of those vessels that McCormick Steamship Company handles?

[fol. 164] A. I do not.

Mr. Geary: Coastwise trade?

Mr. Townsend: Yes.

By Mr. Townsend:

Q. You are not familiar with that?

A. No.

Q. So that you are not prepared to say, then, whether this is merely a bookkeeping transaction or not?

A: I am not.

Mr. Townsend: That is all, thank you.

Examiner Basham: You are excused.

(Witness excused.)

Mr. Scoll: Mr. Burley, please.

R. F. BURLEY was thereupon recalled as a witness for the Commission, and, having been previously duly sworn, further testified as follows:

Direct examination.

By Mr. Scoll:

Q. You have been sworn, Mr. Burley. What vessels are operated by the McCormick line in the coastwise service? Are they chartered vessels or are they vessels which are owned by the McCormick Steamship Company?

A. We have vessels that are owned by ourselves and vessels that we charter and vessels that we handle on which we call commission basis.

[fol. 165] Q. In the coastwise service?

A. Yes.

Q. Which would be involved in the calculations made on Exhibit 15?

A. That is right.

Q. The service charges that we have been discussing, payable at 9th Avenue who receives those revenues, ultimately?

A. Well, the McCormick Steamship Company as an agency receives the service charges, and, in turn, it is charged to the vessel. It is the service charge in the Port of Oakland tariff. Now, it might be a vessel owned by the McCormick Steamship Company. Then you could really say it was a bookkeeping entry. Again it might be a vessel that was on a charter basis and we only would show it in

the accounts to determine how near we were right in the charter rates that we paid. On a commission basis—

Q. (Interrupting) Just a moment. In the case of a charter, then, that also would go to McCormick?

A. A bookkeeping entry. That goes to McCormick. In the case of a commission vessel, the vessel pays it and we earn it, and that goes to contribute to overhead in operating 9th Avenue Terminal.

Q. So in every case the service charges are received and retained by McCormick for its own use?

[fols. 166-203] A. That's right. And credited to the Oakland agency.

Q. And the Oakland agency is an agency of the McCormick Steamship Company?

A. Yes.

Q. Wholly controlled by them, and the revenues collected by them belong to the McCormick Steamship Company?

A. That is correct. And in our bookkeeping we keep it separate from other items.

. . . . .

[fol. 204] GEORGE P. PELL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Will you state your full name?

A. George P. Pell.

Q. What is your position with the McCormick Steamship Company, Mr. Pell?

[fols. 205-219] A. Assistant Freight Traffic Manager.

Q. How long have you had that position?

A. Four years.

. . . . .

[fol. 220] Cross examination.

By Mr. Geary:

Q. The situation, Mr. Pell, where shipments were billed for Encinal discharge and were actually discharged at Ninth Avenue Terminal of the McCormick Company, Mr.



Burley testified that as a result of that operation the McCormick Steamship Company would receive the benefit of the car loading revenue. To the extent that that operation gave McCormick the benefit of the carloading revenue, it took that revenue away from Encinal Terminals, is that right?

A. That is right.

Q. Now, with relation to the situation reflected in the letters, exhibits 18 to 22, that have just been introduced, is it not a fair statement to characterize the conditions outlined in those letters as representing nothing more nor less than the McCormick Steamship Company as a terminal operator competing with the Encinal Terminals as a terminal operator for every possible piece of cargo that they could get to move over the Ninth Avenue terminal?

A. That is correct.

Q. Now, in so far as your representatives, or rather, the representatives of the McCormick Steamship Company in the north, were refusing to take cargo which was destined [fol. 221] for Encinal Terminals, and which caused you the embarrassment which was expressed in the letters, the tariffs during all those particular periods provided for Encinal discharge?

A. That is right.

Q. Now, with respect to the Fiberboard account, about which Mr. Scoll asked you as among the shippers and consignees which were named by him, where does that Fiberboard cargo originate?

A. Puget Sound.

Q. And the vessels from Puget Sound, as I understand your testimony, have a sufficient volume to permit a direct call at the Encinal Terminals?

A. As a rule.

Q. Mr. Pell, were you here in the hearing room yesterday when the lease between the McCormick Company and the city of Oakland was introduced in evidence?

A. I was not.

Q. Do you know that that lease contains a provision which obligates the McCormick Steamship Company that it will endeavor to the extent of its ability to increase the amount of tonnage handled by it through the Port of Oakland, according to the true spirit and purpose of the agreement?

A. I do.

Q. You know that?

A. I do.

[fol. 222] Q. And has the McCormick Steamship Company endeavored to do that?

A. It has.

Q. And this situation that we are just discussing does or does not, in your opinion, reflect the action of the McCormick Steamship Company in endeavoring to bring that about?

A. It does.

Q. It does reflect that condition?

A. It does.

Mr. Geary: That is all.

Redirect examination.

By Mr. Scoll:

Q. Mr. Pell, Mr. Geary asked you a question about car loading revenue. What car loading revenue did he refer to?

A. There is lots of freight that comes down that is loaded direct from ship to cars.

Q. It is loaded direct from ship to cars?

A. Yes.

Q. You mean unloaded direct from ship to cars?

A. It is unloaded from the ship direct to a car, that is one type, and then it might go on a dock and be loaded from the dock at a later date to cars, in which there is a car loading charge involved.

Q. There would be a car loading charge in both cases, or [fol. 223] just the one?

A. In both cases.

Q. Who assesses that charge?

A. The terminal, the people who do the work.

Q. So that when you unload direct from ship to car, or load into the transit shed, and then into the car at Ninth Avenue, you assess a car loading charge?

A. That is right.

Q. And on whom is that charge assessed?

A. On the consignee or the owner of the car.

Q. And that charge covers you for the service, or, I should say—correct that—reimburses you or pays you for the services of the loading of the cars?

A. That is right.

Q. It is a payment for which you render a service?

A. That is right.

Q. Now, you stated in response to a question of Mr. Geary's that as a rule the Puget Sound Vessel has enough cargo for a direct call at Encinal. Now, does it always follow that when a Puget Sound vessel has enough cargo for a direct call at Encinal, that such a direct call is made?

A. It does not.

Q. But, nevertheless, the service charges on the Encinal billed cargo are paid to Encinal?

A. That is correct.

[fol. 224] Mr. Scoll: That is all.

Mr. Townsend: I have several questions—

Examiner Basham: Let us take a short recess at this time.

(Short recess.)

Recross examination.

By Mr. Townsend:

Q. Mr. Pell, did I understand you to say that in the case of some of the southbound coastwise traffic which is billed to Encinal Terminals, it is sometimes unloaded at the Ninth Street Dock and delivered to the shipper at the Ninth Street dock?

A. Where it is consigned to Encinal?

Q. Yes.

A. That is right.

Q. And in those instances the cargo would never actually pass over the docks at Encinal Terminals?

A. Correct.

Q. Now, in those instances do the Encinal Terminals receive a toll from the cargo?

A. I couldn't tell you that. I really don't know. I haven't been over in Oakland there for four years, and Mr. Bushnell can tell you better than I. I really don't know.

Q. Well, is a service charge paid to Encinal Terminals?

A. It is.

[fol. 225] Q. By the McCormick Steamship Company?

A. That is right.

Q. You referred to certain car loading that McCormick Steamship Company did when the cargo is handled over

the Ninth Street dock in Oakland instead of being handled over the docks of Encinal Terminals; you also mentioned the fact that one of the commodities involved in this type of movement that we have discussed is fibreboard, did you not?

A. Fibreboard Products? I don't recall that I did. I might have.

Q. You mentioned that the Fibreboard Company was one of the shippers that had the cargo billed to Encinal Terminals, did you not?

A. Yes.

Q. And their cargo was actually handled over the Ninth Street Dock in some instances?

A. Correct.

Q. Is that true in all instances with respect to the cargo of the Fibreboard Products Company?

A. No, it is not.

Q. Is it not a fact that the Fibreboard Products cargo is handled direct from ship's tackle to the car and there is no actual carloading operation performed by Encinal Terminals when that moves over Encinal Terminals?

A. The work is done by the sailors on the ship or by our [fol. 226] Longshoremen, that is true.

Mr. Scoll: You said Encinal? You mean Encinal?

Mr. Townsend: I mean Encinal.

By Mr. Townsend:

Q. Who receives that revenue for that car loading, if any?

A. I couldn't say definitely, but I am inclined to say it is Encinal. Bushnell could answer that better than I could.

Q. We will take that up with him then. Do you mean by that that McCormick Steamship Company is loading cars for Encinal Terminals?

A. Well, all I can say is that is the practice in the business. Where a car is loaded direct from the ship it is done either by the sailors or by the longshoremen employed by the ship. That is the practice. The ship is generally considered the one that is doing the work.

Q. And you don't know who receives the revenue for that operation?

A. Bushnell could give you that definitely. I would sooner you would ask him.

Q. With respect to the cargo of the Fibreboard Products Company, concerning which you have testified, that moves from the Pacific Northwest and is billed to Encinal Terminals, where does that car ultimately go?

Mr. Geary: I should think, as a matter of fact, that the witness could not know. His obligation carries a bill of [fol. 227] lading from the northwest to Encinal Terminals, and it goes to Encinal Terminals as far as he is concerned, and the question would be one properly addressed to the Fibreboard Products Company.

By Mr. Townsend:

Q. I will ask the witness if he knows where that cargo goes.

A. I don't know definitely. I have an idea.

Q. Don't you solicit that cargo from somebody?

A. Yes, the company solicits it, yes.

Q. From whom do you solicit that?

A. From the Fibreboard Products.

Q. Does the Fibreboard Products Company have a plant in Stockton?

A. They do.

Q. Don't you know, as a fact, that a lot of that cargo about which we are talking goes to Stockton?

Mr. Geary: Just a moment. Mr. Examiner, I don't know that that has any relevancy unless Mr. Townsend can tell us what that relevancy that has to the terminal here in these proceedings. I think we are investigating the terminal operations and we are not investigating anything with respect to origin points or destination points of cargo outside of the particular terminals that are respondents. I object to the question on the ground that it is incompetent, [fol. 228] irrelevant and immaterial, and has no place in this proceeding, and if Mr. Townsend has a particular complaint he has a proper tribunal to file a complaint before and try out that issue.

Mr. Townsend: I thought, Mr. Geary, we were here trying out the question of whether there is a written agreement or arrangement between McCormick Steamship Company and Encinal Terminals. This question is directed toward that question as a preliminary question, to show that cargo is being forced through this Encinal Terminals at Ninth

Street under that arrangement instead of following the channel through Stockton, and the question is perfectly relevant and material.

Mr. Geary: If that is a fact, then it is my understanding that on the basis of which this case is proceeding you may be in the right church but in the wrong pew, because at the moment we are considering violations or alleged violations of Section 15 of the Act.

Mr. Townsend: That is what I say, there is an alleged agreement between McCormick and Encinal that has not been filed and I am trying to develop the fact.

Examiner Basham: Read the question.

(Question read by the reporter as above recorded.)

Examiner Basham: Objection overruled.

A: I would say it does.

By Mr. Townsend:

Q. Have you ever been to Stockton and conferred with [fol. 229] any receiver of any cargo from the Pacific Northwest in an effort to prevent the discontinuance of this movement of Fibreboard products through the Ninth Street Dock or Encinal Terminals in the manner that we have been discussing?

The Witness: Will you read me that, please?

(The pending question was read by the reporter as above recorded.)

A. No.

By Mr. Townsend:

Q. Have you ever been to Stockton and conferred with the owners or representatives of the newspaper known as the Stockton Record in an effort to prevent the movement of news print paper by the McCormick Steamship Company from the Pacific Northwest through Stockton, so that it would not be necessary for the McCormick Steamship Company to discontinue handling Fibreboard Products through the Ninth Street Dock or Encinal Terminals in the manner in which we have been discussing?

A. No.

Q. The answer is "No"?

A. The answer is "No."



Mr. Townsend: That is all, thank you.

Mr. Geary: Have you any more questions, Mr. Scoll?

Mr. Scoll: No more.

[fol. 230] By Mr. Geary:

Q. Mr. Pell, there is one situation that has not apparently been explained. When cargo which is originally destined for Encinal Terminals is actually discharged at Ninth Avenue, is it not true that some of that cargo is actually taken from Ninth Avenue and laid down on the Encinal Terminals transit shed?

A. I believe there are occasions where that has happened, yes.

Q. And in that situation Encinal Terminals Company makes the direct delivery of that cargo to the consignee?

A. That is correct.

Q. And McCormick in that situation pays a service charge on that cargo?

A. We do.

Mr. Geary: That is all.

Examiner Basham: Any further questions?

(No response.)

You are excused.

(Witness excused.)

Mr. Scoll: Mr. George Bushnell.

GEORGE H. BUSHNELL was recalled as a witness for the Commission and, having been previously duly sworn, testified further as follows:

Direct examination.

[fol. 231] By Mr. Scoll:

Q. You have been previously sworn, I believe, have you not?

A. I have.

Q. Do you have there some information for the record?

A. Information that was requested by Mr. Geary yesterday as to the number of vessels loaded at Ninth Avenue during the month of February, 1938 (Handing to counsel).

Mr. Scoll: He is your witness, Mr. Geary, if you want to ask him some questions on that.

Mr. Geary: I think, in view of the fact, Mr. Examiner, that the record shows that I requested Mr. Bushnell to furnish this information, perhaps the simplest way to permit it to go into the record would be merely to introduce the recapitulation which Mr. Bushnell has prepared, and which indicates that there were 15 vessels during that particular month.

The Witness: Fourteen.

Mr. Geary: Fourteen vessels, you are right. I ask that it be introduced as an exhibit.

Examiner: It may be introduced and received as Exhibit 23.

(The document referred to was marked "Commission's Exhibit 23" and received in evidence.)

Mr. Scoll: Have you any more questions?

Mr. Geary: Not on that particular subject.

[fol. 232] By Mr. Scoll:

Q. Mr. Bushnell, the document that I handed you is entitled, "McCormick Steamship Company Cargo List;" it is in three sheets, the first one is Puget Sound to Encinal Terminals, Alameda; the second is Puget Sound to Encinal Terminals, Alameda; and the third is Columbia River to Encinal, Alameda. Are you familiar with the contents of those sheets?

A. I am fairly so.

Q. What do they show?

A. For the particular period involved, from June, 1938 to May 20, 1939, they show a list of southbound cargo billed to Encinal Terminals, Alameda, but actually discharged at Ninth Avenue Terminal and delivery effected at that point.

Q. Were these lists prepared by you or under your supervision?

A. They were. In accepting them for the record, I trust you will do so, subject to clerical errors.

Mr. Scoll: Yes. I offer them for the record.

Examiner Basham: Off the record.

(Discussion off the record.)

Mr. Geary: May I ask Mr. Bushnell one or two questions on the exhibit?

Mr. Scoll: Yes.

Mr. Geary: Did you, yourself, Mr. Bushnell, actually test the accuracy of this report as indicating that the merchandise was delivered to the consignee from Ninth Avenue?

[fol. 233] The Witness: Possibly I should correct that. It may be that in certain instances some of this freight was eventually drayed to Encinal Terminals. I believe our available records would not show, unless we checked back, that that was definitely the case.

Mr. Geary: Just for the purpose of bringing a point right clearly into focus, will you look——

Examiner Basham: Just a minute, Mr. Geary. I believe I will accept this.

Mr. Geary: All right.

Examiner Basham: The cargo list showing cargo from Puget Sound to Encinal Terminals, two sheets, will be received as exhibit 24-A, and the cargo list from Columbia River to Encinal Terminals will be 24-B.

(The documents referred to were thereupon marked "Commission's Exhibits 24-A and B" and received in evidence.)

Mr. Geary: Referring, then, to exhibit 24-A, I call your attention to those shipments of Hunt Brothers, totaling some 1,500 cases of canned goods. Would you say that that particular shipment was actually delivered to Hunt Brothers from Ninth Avenue Terminal?

A. It is possible.

Q. Do you know whether that is the fact or not?

A. Not without checking further.

Q. Will you please take that record before the hearing is [fol. 234] concluded and definitely check to see whether or not the categorical statement which you made in the record to the effect that all of that cargo was in reality delivered to the consignee at Ninth Avenue is correct; and if there is any correction to be made in the record or in the exhibit, will you make a statement to that effect for the record?

A. I will.

Mr. Scoll: May we go off the record for a minute, Mr. Examiner?

Examiner Basham: Yes.

(Discussion off the record.)

By Mr. Scoll:

Q. This list, Mr. Bushnell, was prepared, was it not, with the intention of showing only the cargo which was billed to Encinal in the southbound service from Puget Sound and Columbia River, but actually discharged at Ninth Avenue, was that correct?

A. That was the intent and purpose of it.

Q. You didn't intend to include in this list any cargo which was billed to Encinal but discharged at Encinal?

A. No, sir.

Q. And subject to such corrections as you may have to make on this list, it shows the cargoes which were delivered to the consignees at Ninth Avenue, and therefore never touched Encinal Terminals?

[fol. 235] A. That is a fact, subject to its being correct?

Q. Subject to such corrections as have to be made?

A. Yes.

Q. Now, the toll charge is a charge that is ordinarily made against the cargo, isn't that correct?

A. That is correct.

Q. And the service charge, of course, is against the vessel?

A. Yes.

Q. Now, this list shows a column headed "Tolls." Does that list of tolls means that those toll charges were paid to Encinal?

A. I believe it does.

Q. So that that column entitled "Tolls" shows the amounts of tolls paid by the McCormick Steamship Company to Encinal Terminals?

A. I believe so.

Q. And the column headed "Service Charge" shows the service charges that were paid on that cargo to Encinal Terminals?

A. Yes, sir.

Q. Now, does the McCormick Steamship Company discharge cargo billed to other of the Bay Terminals than Encinal at its own Ninth Avenue terminal?

A. We do.

Q. Does McCormick give billing to other terminals than Encinal in the East Bay?

[fol. 236] A. We do.

Q. And where do you discharge that cargo?

A. Sometimes direct, sometimes at Ninth Avenue Pier.

Q. And when you discharge it at Ninth Avenue Pier, do you pay those other terminals a service charge similar to the charge you pay Encinal?

A. I believe we do.

Q. Let us get at it a little more specifically. You do give current billing on southbound cargo from the northwest, do you?

A. We do.

Q. And occasionally you discharge that cargo at Ninth Avenue?

A. Yes, sir.

Q. And deliver it to the consignee at Ninth Avenue?

A. I believe in most cases that cargo is drayed.

Q. That cargo is drayed over to Oakland?

A. No, to the pier that it is accepted for.

Q. To the pier that it is accepted for, which may be one of the Oakland piers?

A. Or the Outer Harbor.

Q. Or might be Outer Harbor?

A. Yes.

Q. Then you pay Oakland a service charge on that cargo?

A. We do.

Q. Do you also pay them the tolls that you pay Encinal?

[fol. 237] A. The Port of Oakland tariffs provide that only one toll shall be collected between their respective properties.

Q. So that you pay them no toll?

A. There is no toll absorption, no.

Q. By toll absorption, you mean that McCormick does not pay Oakland any tolls and absorbs them?

A. That is correct.

Q. How often does it happen that you would bill cargo southbound to Outer Harbor and dray it at Ninth Avenue to Outer Harbor, and pay a service charge on it to Oakland?

A. That movement is very small in comparison to the other movement. As I say, it is very small and very occasional.

Q. Now, you say that is very small. Would it be true that the amount of cargo which would be billed to Oakland but which you would actually discharge at Ninth Avenue and then yet pay a service charge to Oakland, would be still smaller? Wouldn't it?

Perhaps the question is a little involved. Let me rephrase the question.

How often do you accept cargo for Outer Harbor billing but deliver it at Ninth Avenue to the consignee?

A. Very rarely.

Q. Very rarely? And on those occasions you pay Oakland a service charge?

A. I am not certain.

[fol. 238] Q. You are not sure?

A. I am not sure.

Q. I show you now a document consisting of two pages, entitled "McCormick Steamship Company cargo list, intercoastal—W. B.", which I assume means "Westbound." Are you familiar with that document?

A. I am.

Q. Was that list prepared by you or under your direction?

A. Under my direction.

Q. Now, what does the list show?

A. It shows shipments of westbound intercoastal cargo for the period of June 1, 1938, to May 31, 1939, which were billed to Encinal Terminals and discharged at Ninth Avenue pier, and delivery effected at that point.

Q. So this is a list of intercoastal shipments for the period indicated which were billed to Encinal but discharged at Ninth Avenue and on which service and toll charges were paid to Encinal Terminals, is that correct?

A. That is correct.

Q. And the cargoes on this list didn't go to Encinal Terminal direct, did they?

A. To the best of my knowledge, none of those were ever delivered to Encinal.

Q. And they were delivered to the consignees at Ninth Avenue?

[fol. 239] A. That is right.

Mr. Scoll: I offer this document for the record.

Examiner Basham: It will be received as exhibit No. 25.

(The document referred to was marked "Commission's Exhibit No. 25," and received in evidence.)



By Mr. Scoll:

Q. Now, the shipments included in that list originated at eastern points, and were transported in Intercoastal commerce, were they not?

A. They were.

Q. And in vessels of the McCormick Steamship Line?

A. Yes, sir.

Q. Now, does McCormick pay service and toll charges on any other westbound intercoastal shipments which are billed to other terminals than Encinal and delivered at Ninth Avenue?

A. I didn't get that question. Will you repeat it?

Mr. Scoll: Read the question.

(Question read.)

The Witness: No, we don't, unless by direct call, because our tariff only provides Ninth Avenue as a port of discharge in Oakland.

By Mr. Scoll:

Q. So that where—

A. In other words, we may make a direct call at another terminal, and then we would pay a service charge.

[fol. 240] Q. But if you don't make a direct call and a discharge at Ninth Avenue, you don't have any other terminal service and toll charges except Encinal?

A. There are no shipments in that category.

Mr. Scoll: I see.

Mr. Graham: What does he mean by that, that there are no shipments in that category?

By Mr. Scoll:

Q. Can you answer Mr. Graham?

A. Well, on intercoastal traffic westbound our only Oakland Terminal is Ninth Avenue Pier, unless prior booking arrangements are made.

Mr. Graham: What do you mean, you don't accept any other cargo billed for any other East Bay Terminal except Ninth Avenue?

The Witness: Only subject to prior booking arrangements, in which case it is usually by direct call, it is delivered to the other terminal by direct call.

Mr. Graham: I see. In other words, if you have cargo, say, for Howard Terminal on your ship, billed for Howard Terminal, you actually deliver at Howard Terminal and you don't deliver it at Ninth Avenue?

The Witness: That is correct.

By Mr. Scoll:

Q. Now, reverting to the southbound service for a moment [fol. 241] ment, Mr. Bushnell, how often do your southbound vessels call direct at Encinal?

A. I couldn't say definitely. It would have to be checked into.

Mr. Geary: Mr. Examiner, for the purpose of clarification, because I am under the impression that we may be stepping off the deep end here, is there anybody present in the room who has got one of the present intercoastal westbound tariffs, because the witness was obviously relying on memory, and the answer was not accurate as to what the westbound tariff permits?

(No response.)

With that in mind, I think I may just as well at this time ask if the Commission will consider in evidence the westbound tariff of the Intercoastal Steamship Freight Association?

Mr. Scoll: I am willing to so stipulate.

Examiner Basham: Any objection to that stipulation or understanding?

(No response.)

Examiner Basham: That will be permitted.

Mr. Scoll: What was the last question?

(The question and answer were read.)

By Mr. Scoll:

Q. Would the southbound call depend on the volume of [fol. 242] cargo you had billed for Encinal in the ship?

A. That would have something to do with it; the element of time, cost, and other factors that have already been expressed by Mr. Burley and Mr. Pell would enter into it.

Q. Then would you say that such calls were frequent?

A. They are frequent.

Q. What do you mean by frequent?

A. Well, possibly every other vessel.

Q. Will you prepare for us and submit for the record a list of the southbound vessels which discharged at Ninth Avenue, and those which discharged at Encinal during the month of January, 1940?

A. 1940 would not be a representative month because for part of the month there was a strike on.

Q. What would be a representative month?

A. I would say May, 1939.

Q. Why would that be a representative month?

A. Well, I just take that out of the sky. Take January, 1939.

Q. Suppose you take two months, January, 1939, and June, 1939; are those months representative?

A. I think so.

Q. All right. This list which has been introduced as exhibit No. 24-A and 24-B, shows the following consignees of southbound traffic billed to Encinal. Fibreboard, Hunt [fol. 243] Brothers, California Packing, Crown Willamette, Dewey & Almy, National Lead, U. S. L. Battery, Western States Grocery; those consignees all took delivery at Ninth Avenue, is that right, to your knowledge?

A. If that record is correct, they did.

Q. Now, just to clarify the record, will you state again whether in your knowledge McCormick pays these service and toll charges to any other East Bay Terminal to which it gives billing when the vessel discharges at Ninth Avenue?

The Witness: Will you repeat that question, please?

(Question was thereupon read by the reporter as above recorded.)

A. I think you could clarify that. Do you mean the delivery is effected at that point?

By Mr. Scoll:

Q. And the delivery is effected at Ninth Avenue?

A. I am not certain whether we do or do not.

Q. If such statements were made, would you know about it?

A. I would.

Mr. Scoll: That is all.

Cross-examination.

By Mr. Geary:

Q. Mr. Bushnell, referring to exhibits 24-A and 24-B, both of those exhibits refer to a column which is headed with the word "Tolls." If that cargo is actually discharged at [fol. 244] Ninth Avenue and delivery is effected at Ninth Avenue, as testified by you, what becomes of the tolls which are charged by the Port of Oakland?

A. The tolls follow the shipment and are collected from the consignees in addition to their regular freight charges. Those tolls would be collected by us and turned over to the Port of Oakland.

Q. Now, then, using the first item on exhibit 24-A, which is a shipment of the Fibreboard Products on June 3, 1938, to the Fibreboard Products at Antioch, that shows a service charge of \$3.77 and a toll charge of 58 cents. Now, in addition to that, would there be a toll charge which would be due to the Port of Oakland on that shipment?

A. Yes, the Port of Oakland is entitled to tolls on the freight that moves over their facilities.

Q. And would that toll charge be paid to the Port of Oakland?

A. It would be.

Q. And would that toll charge be the same as the 58 cents that is reflected here?

A. It should be.

Q. In which event would that be charged against the cargo in addition to the 58 cents which you say is here paid to the Encinal Terminals?

A. There are not two toll charges against the cargo.

Q. What I am trying to get at is, as I understood your [fol. 245] direct testimony, you paid to the Encinal Terminals on that particular shipment, \$3.77, and 58 cents?

A. That is right.

Q. In addition to that, there was another 58 cents which had to be paid to the Port of Oakland?

A. Right.

Q. Now, who paid that?

A. We paid it to the Port of Oakland after collecting it from the consignee. You can work this either way, you can

say we are paying Encinal the one we collect from the cargo and absorbing the one we pay the Port of Oakland, or the other way around.

Q. In any event, as far as that particular shipment was concerned, there was paid to the Encinal Terminals a total of \$4.35, and in addition to that there was 58 cents to the Port of Oakland?

A. That is correct.

Q. Have you that Encinal Terminals bill number, which is 60482, in your files?

A. It will be in our accounting department in San Francisco.

Q. And in checking against that bill number would indicate whether or not the Encinal Terminals Company actually made that charge against you, would it not?

A. The bill would be on their billhead.

Q. Will you take a look at that bill and see if on that bill [fol. 246] or any of the bills which are numbered or listed there in exhibit 24-A, 24-B or 25, there was actually shown a toll charge made against the McCormick Steamship Company by the Encinal Terminals, and will you state for the purpose of the record what the condition of those bills indicates?

A. I will have to look up that information.

Q. Now, if that cargo was taken direct to Encinal Terminals, Encinal, in addition to the service charge, would also collect a toll charge?

A. They would collect a toll charge from the owner of the cargo?

Q. On the cargo that was delivered at Encinal?

A. Yes.

Q. And which toll charge, under your statement, is now paid to Oakland as a toll charge?

The Witness: Will you read that?

(The question was thereupon read by the reporter as above recorded.)

A. I don't get it.

By Mr. Geary:

Q. All right, I will see if I can clear it up. On that first shipment again, on exhibit 24-A, if that shipment was

delivered direct at a pier of the Encinal Terminals, Encinal would assess a toll charge of 58 cents?

A. Correct.

[fol. 247] Q. And because of the fact that that shipment was delivered at Ninth Avenue, according to your statement, the Port of Oakland is entitled to a 58 cent toll charge?

A. That is correct.

Q. Now, during any of the period mentioned in exhibits 24-A, 24-B, and 25, were there any shipments either in coast-wise or in the intercoastal that were handled by the McCormick Steamship Company, destined for delivery to the Howard Terminals, that were discharged at Ninth Avenue?

A. Yes, I believe there were.

Q. And in those instances, when they were discharged at Ninth Avenue, what action was taken by the McCormick Steamship Company to get the cargo to the Howard Terminals?

A. It was drayed to the Howard Terminals.

Q. And there delivered to the Howard Terminal?

A. Yes.

Q. Now, taking exhibit 24-A for the moment, which relates to a period from June 3, 1938, to May 15, 1939, on those shipments that were destined for delivery to the Encinal Terminals, your tariff permitted you to make the drayage delivery to the Encinal Terminals, did it not?

A. It did.

Q. And have you any idea as to the approximate cost that it would be to the McCormick Steamship Company to dray that cargo from Ninth Avenue to the Encinal Terminals?

[fol. 248] A. The average rates are on the basis of \$1.00 per ton at the present time on those commodities.

Q. And, therefore, instead of draying that cargo to Encinal Terminals—well, Mr. Bushnell, I frankly have my own question about the accuracy of that record from some of the information that has been conveyed to me, that a substantial amount of that cargo was not in fact delivered to the consignee at Ninth Avenue, but that is subject to check—but, accepting that exhibit as correct, the McCormick Steamship Company, on the cargo which it did dray to the Encinal Terminals in fact substituted the expense of the drayage charge for the service charge which it paid to the Encinal Terminal?



Mr. Scoll: That sounds like a conclusion to me, Mr. Geary.

Mr. Geary: If it is a fact, it is a fact whether it is a conclusion or not, and I think that is what we are interested in.

Mr. Graham: How would that affect the issues in this proceeding?

Mr. Geary: I will submit the question.

Examiner Basham: I wonder if you can reframe that question? Is this a convenient place to stop for lunch? Two o'clock.

(Whereupon at 12:35 p. m. a recess was taken until 2:00 p. m. of the same day.)

[fol. 249]

Afternoon Session

2:00 p. m.

Examiner Basham: Come to order, please.

GEORGE H. BUSHNELL resumed the stand and testified further as follows:

Cross-examination (resumed).

By Mr. Geary:

Q. Mr. Busnell, let me reframe the question which we were considering before the adjournment: If the cargo which was destined for Encinal Terminals was actually taken by the vessel and delivered to Encinal Terminals, the Encinal Terminals would be entitled to a service charge on that cargo and it would also earn any car loading that might be involved in the operation in sending the cargo to the ultimate consignee, isn't that true?

A. That is true, to a point. On cargo transferred direct from vessel to car, the car loading on that has accrued to the McCormick Steamship Company.

Q. In other words, the McCormick Steamship Company would make that car loading charge on shipments which were discharged direct from the vessel into an open gondola?

A. Right.

Q. And Encinal wouldn't have any part of that car loading charge?

A. No.

Q. Now, to what extent, if at all, does that operation of discharging into an open gondola compare with the discharge of cargo onto the floor of the transit shed for ultimate car loading?

The Witness: Will you restate that question?

(The question was read by the Reporter.)

A. Well, in the first place, it is a faster operation, and it relieves the pier shed of any congestion.

By Mr. Geary:

Q. What I mean, Mr. Bushnell, is, what is the volume, comparatively speaking, of such car loading direct from ship's tackle into open gondolas, compared with car loading from the floor of the transit shed?

A. The proportion is materially greater.

Q. The proportion of what is materially greater?

A. The proportion of tonnage so moved or handled.

Q. Is it proportionally greater loaded into the open gondola, or greater discharged onto the floor?

A. Into the gondola.

Q. It is greater loading direct into the gondolas than it is onto the floor of the transit shed?

A. That is correct.

Q. Is that true with respect to cargo which was designated for Encinal Terminals discharge?

A. That is what I am speaking about.

Q. I didn't want to get the thing confused with respect to the general, ordinary operation, of the McCormick Steamship Company in comparison with—

A. This applies particularly to southbound cargo from Puget Sound.

Q. That is right. Now, taking the shipment, however, that was discharged and moved from the transit shed into the cars, if that merchandise was discharged at the Encinal Terminals they would earn that car loading?

A. That is correct.

Q. On the other hand, where that cargo is discharged onto the Ninth Avenue Terminal, that car loading charge is earned by the McCormick Steamship Company?

A. That is correct.

Q. Now, in addition to the car loading charge that might be earned by the Encinal Terminals if the vessel went direct

to the Encinal Terminals, there would also be a charge assessed by Encinal against the cargo in the form of tolls?

A. That is right.

Q. And Encinal would earn that?

A. Yes.

Q. Is it not true that if the cargo was discharged onto the floor of the Ninth Avenue Terminal, and the Encinal [fol. 252] Terminals insisted that that cargo be brought over to the Encinal Terminals, that it would cost the McCormick Steamship Company approximately \$1.00 a ton for that cargo?

A. That is correct.

Q. And on that particular cargo the Encinal Terminals would earn the car loading, and likewise would charge a toll against the cargo?

A. That is correct.

Q. Has there ever been any time that you can recall, in your connection with the McCormick Steamship Company at Oakland, where the Encinal Terminals Company has ever definitely compelled the McCormick Steamship Company to dray that cargo over to Encinal Terminals so that they might earn the service charge, the car loading charge, and the toll?

A. No, sir.

Q. And to the extent that the McCormick Steamship Company paid to the Encinal Terminals the service charge on cargo that was delivered direct from Ninth Avenue, the McCormick Steamship Company saved itself at least \$1.00 a ton, which would otherwise be required to be charged for drayage from Ninth Avenue to Encinal?

Mr. Scoll: I think that question again calls for a conclusion of the witness which is not borne out by the previous testimony, and for which certainly no foundation has been laid. This witness has testified merely that the cargo which [fol. 253] is discharged at Ninth Avenue into cars is assessed a car loading charge which is collected by McCormick, and that if that cargo had been discharged at Encinal, Encinal would collect the charge. Now, on that basis I cannot see what foundation has been laid for this witness to state his conclusion that McCormick pays to itself the car loading charge and such draying charge as it might have to pay if the cargo was transferred to Encinal.

Mr. Geary: Mr. Examiner, it is my understanding that

the section covering this particular case which we are considering at this time is Section 15, and what I am endeavoring to establish is that this arrangement does not in anywise constitute an agreement between Encinal and the McCormick Company, and that in reality what is being accomplished here—and I have no objection to so characterizing it—that it is the McCormick Steamship Company, for the best interests of its own operating convenience, that desires to make the delivery and to take this cargo in this particular fashion rather than to pay the \$1.00 a ton.

Mr. Scoll: I think that that, again, is argument, which can be developed on the basis of the facts that are disclosed in this record. I think it is improper to ask the witness whether on the basis of the foundation you have laid the McCormick Company pays any money.

Examiner Basham: Please read that question back.

[fol. 254] (The question referred to was read by the Reporter.)

Examiner Basham: I think that is a proper question. Let the witness answer.

A. That is true to a greater or lesser degree.

Mr. Scoll: Why do you qualify your answer to that question, Mr. Bushnell?

The Witness: Possibly I should not qualify it.

Mr. Scoll: In other words—

The Witness: By delivering at Ninth Avenue pier we save \$1.00 a ton, there is no doubt about that, on that cargo that is billed to Encinal.

By Mr. Geary:

Q. And is it not likewise true that by that same operation, where you make delivery of the cargo from Ninth Avenue, you deprive Encinal of the car loading earnings?

A. On such cargo as might be handled that way.

Q. Now, have you ever had cargo delivered on Ninth Avenue which was definitely designated for discharge at Howard Terminal?

A. Yes, we have.

Q. And how is that cargo taken from the Ninth Avenue Terminal to the Howard Terminal?

A. By dray.

Q. And there delivered into the possession of the Howard Terminal?

[fol. 255] A. That is right.

Q. Has there ever been any situation where you have made direct delivery of that cargo to the consignee?

A. There have been such cases.

Q. Do you recall whether or not in such cases a service charge was paid to the Howard Terminal?

A. I believe so.

Q. The cost of draying from Ninth Avenue Terminal to Howard Terminal is \$1.00 a ton?

A. Yes, sir.

Q. The same as it is to Encinal?

A. Yes, sir.

Q. In that particular case, where the cargo was destined for Howard Terminal, was a toll charge made against the cargo by the McCormick Steamship Company, and another toll charge assessed by the Howard Terminal?

A. I don't know.

Q. Referring to Exhibits Nos. 24-A, 24-B, and Exhibit 25, do you know, Mr. Bushnell, whether those exhibits and the extensions were made by the same employee at the McCormick Steamship Company, or by different employees?

A. By different employees.

Q. In other words, the listing of the shipper and consignee was made by one employee, and the extensions made by another?

A. I think, in effect, they were made by the same people. [fol. 256] This is the only exception that looks like it has been put in by someone else (indicating).

Q. That is the extension on the second page of Exhibit 25?

A. Yes. I would like to check that further, though, because there were three people working on this.

Q. I mean, quite frankly, Mr. Bushnell, that is exactly what I have in mind, and I want to be sure that particular exhibit is accurate before I resume any further cross examination, and it was a part of the reason that I have just expressed that I wanted you to have the opportunity of checking the exhibit carefully.

A. I shall do that.

Q. If I have not already requested you to do so with respect to those exhibits, I wish you would definitely make it a point to check whether or not the Encinal Terminals

did, in fact, charge the tolls which are shown on Exhibits Nos. 24-A and 24-B, for the period from June, 1938, to May, 1939.

A. I shall do that.

Mr. Geary: I will reserve my further cross examination of the witness with respect to those exhibits until such time as he has had the opportunity of making the check that I have requested of him.

Redirect examination.

By Mr. Scoll:

Q. Mr. Bushnell, Mr. Geary asked you to determine [fol. 257] whether Encinal had actually charged McCormick the tolls which are listed on Exhibit 24-A. Now, for such determination that you make for Mr. Geary as to whether or not the tolls were charged and whether or not the service charges were also charged to McCormick by Encinal, will you also include in that determination whether or not those charges were paid by McCormick?

A. I shall be glad to.

Q. Now, Mr. Geary asked you some questions about unloading into gondolas. What commodities do you unload into gondolas at Ninth Avenue in the southbound service?

A. The particular commodity is pulp board, in what are called "jumbo rolls," large rolls with an iron core, weighing approximately three tons each.

Q. Is that for the account of one consignee?

A. Yes, it is.

Q. Do you have several such accounts, or only one?

A. Only one, as far as I know.

Q. And those shipments to that consignee are usually billed to Encinal?

A. Yes.

Q. They are always billed to Encinal?

A. Practically; I don't know any that have not been.

Q. Now, who determines where cargo shall be delivered, Encinal or the consignee?

[fol. 258] A. I think that is determined between Encinal and the owner of the cargo.

Q. Now, under your—

A. That is, between ourselves and Encinal and the owner of the cargo.



Q. Between all three of you?

A. Yes.

Q. Well, now, if the consignee of that pulp board tells you that he will accept delivery at Ninth Avenue, you deliver it to him at Ninth Avenue?

A. That is correct.

Q. Similarly, if the consignee of any other cargo is willing to accept delivery at Ninth Avenue, you will deliver it to him at Ninth Avenue?

A. We will.

Q. And in your business you make it a practice, wherever possible, to have your consignees accept cargo at Ninth Avenue?

A. We do, if the vessel has Alameda cargo aboard, and is not discharging direct at that port.

Q. Now, then, if Encinal insisted that this cargo of pulp board—that a particular cargo of pulp board, let us say, should be brought from Ninth Avenue after it had been unloaded there, that is, discharged from the vessel but not delivered—if Encinal insisted that such cargo should be [fol. 259] brought over to Encinal's pier, would you absorb the cost of moving it over there?

A. I believe that would have to be qualified to this extent—

Q. No, just a moment. Answer my question.

The Witness: Will you repeat that question?

(The question referred to was read by the Reporter.)

A. We would.

By Mr. Scoll:

Q. Notwithstanding the fact that the consignee was willing to take delivery at Ninth Avenue?

The Witness: Will you repeat that question?

(The question referred to was read by the Reporter.)

A. Is that a question?

By Mr. Scoll:

Q. Yes.

A. It is rather a hypothetical question. I don't know whether it would ever come up in such a way.

Q. Well, how would it ever come up that Encinal would insist that you deliver the cargo at Encinal Terminals after you had unloaded it at Ninth Avenue?

A. I previously testified.

Q. Let us hear it.

Mr. Geary: I was just going to say, Mr. Examiner, that I believe the question has been asked and answered, and [fol. 260] the witness, to my recollection, testified that there never was such a situation.

By Mr. Scoll:

Q. You mean that Encinal has never insisted that you bring the cargo over to Encinal's dock after you have unloaded it at Ninth Avenue?

A. Certain cargo, yes.

Q. Did you do that?

A. Yes.

Q. And you absorbed the drayage cost?

A. We did.

Q. Now, Mr. Geary asked you about saving the drayage cost when you delivered cargo at Ninth Avenue. Did you mean, when you said that you saved the drayage cost, when you delivered it at Ninth Avenue, that you saved it because the consignee was willing to accept delivery at Ninth Avenue?

A. I would say in those cases that we did save it if he was willing to accept delivery at Ninth Avenue, and I might add that that also has a bearing on whether or not the vessel discharges direct at Alameda. It is one of the factors.

Q. We are talking now only about those occasions when the vessel does not call direct at Encinal, but discharges at Ninth Avenue.

A. Possibly I should correct a statement I just made. I believe you put the question: Has Encinal ever insisted on [fol. 261] certain cargo being drayed over there? I think that is erroneous. My answer to that was erroneous in this respect, that it was the consignee of the cargo who insisted on it being delivered there, for reasons of their own.

Q. You mean that Encinal never directly made a request on you to dray the cargo over to Encinal dock after you had unloaded it at Ninth Avenue?

A. That is correct.

Q. But sometimes the shippers have made such a request—the consignees?

A. Yes, the consignees.

Q. Which consignees?

A. California Packing Corporation, for one; Hunt Brothers—

Q. What cargoes of Hunt Brothers would be involved in such a situation, what commodities?

A. Canned goods.

Q. Consigned to whom?

A. To Hunt Brothers.

Q. Shipped to Hunt Brothers and consigned to Hunt Brothers?

A. I believe the shipper is Hunt Brothers.

Q. Any others?

A. Those are all that I can think of offhand.

Q. Now, Mr. Geary asked you a question about a toll charge paid at the Howard Terminal on cargo billed to Howard Terminal but discharged at Ninth Avenue. Now, I believe you have testified earlier in this proceeding that [fol. 262] there was only one toll charge assessed at any of the ports under the jurisdiction of the Port of Oakland, is that correct?

A. That is, in so far as Outer Harbor and Ninth Avenue are concerned. I am not certain what the arrangement is as far as Howard is concerned.

Q. Did you ever pay two toll charges where you had cargo that was billed to Howard but delivered to Ninth Avenue?

A. I answered that I did not know.

Q. If you made such payments frequently you would know about it, wouldn't you?

A. Yes; the shipments are extremely rare.

Q. Few and far between?

A. Yes.

Q. But it is your business to know when such shipments are made and when such payments are made?

A. Well, the bills pass through my office.

Mr. Scoll: That is all.

Examiner Basham: Any further questions?

Mr. Townsend: I have a question or two.

## Recross-examination.

By Mr. Townsend:

Q. Mr. Bushnell, I am not clear yet with respect to who receives the revenue for the car loading of gondola cars at Encinal Terminals when your vessel calls directly at Encinal Terminals and discharges some of this jumbo roll cargo that you mentioned. Now, that is handled, as I understand it, directly from ship's tackle into the open car, is it not?

A. Yes, sir.

Q. Is that handled by the crew of the vessel?

A. It could be handled either by the crew of the vessel or by the longshoremen employed by the vessel.

Q. In other words, whoever handles that is really employed by the vessel?

A. That is true.

Q. Who receives the revenue for that car loading operation?

A. The McCormick Steamship Company.

Q. The McCormick Steamship Company keeps that revenue, so far as you know?

A. They do.

Q. When cargo from the Pacific Northwest is billed to the Encinal Terminals, but is delivered to the consignee at the Ninth Avenue dock, does the McCormick Steamship Company pay Encinal Terminals any dockage charge?

A. Not to my knowledge.

Q. As I understand it, the McCormick Steamship Company does pay the Encinal Terminals a service charge?

A. That is right.

Q. Why does the McCormick Steamship Company pay Encinal Terminals a service charge and not a dockage charge in that case?

[fol. 264] A. I don't believe I am qualified to answer that. I would rather you would ask that of Mr. Burley.

Q. You stated, I believe, that when cargo billed to Howard Terminal from the Pacific Northwest is delivered to the consignee at Ninth Avenue dock, no service charge is paid to Howard Terminal, is that correct?

A. Yes.

Q. Why does McCormick Steamship Company in that case pay no service charge to Howard Terminal, but in a

similar case, when the cargo is billed to Encinal Terminals, they pay a service charge to Encinal Terminals?

A. I think Mr. Burley answered that this morning in his testimony.

Q. I did not hear him answer it.

A. I would prefer that he did answer it, as being better qualified to answer it.

Mr. Townsend: All right. I will ask him. That is all I have.

By Mr. Geary:

Q. With respect to the Hunt Brothers' shipments that you mentioned, isn't it true, Mr. Bushnell, that there are accumulated on the Encinal Terminals shipments of Hunt Brothers which may be consolidated into pool cars of canned goods containing everything from berries to peaches? [fol. 265] A. That is my understanding of the situation.

Q. Therefore, on a shipment of canned goods consigned to Hunt Brothers from, let us say, Seattle, the reason that they would insist on delivery at the Encinal Terminals would probably be due to the fact that Hunt Brothers were accumulating carloads of canned goods there to be shipped, let us say, in the intercoastal trade?

A. That is true.

Q. And as the Encinal Terminals were being served by more than one intercoastal carrier, it would be more advantageous to Hunt Brothers to have it accumulated at Encinal Terminals, rather than to give it to the McCormick Steamship Company for intercoastal transportation?

A. That would be the correct line of reasoning.

Q. And it would be that type of reasoning that would necessitate you, under those circumstances, making the drayage from Ninth Avenue to the Encinal Terminals?

A. That is correct.

Q. Would you say that the same thing was true with respect to the California Packing Corporation?

A. I would say that it was, from what I know of their method of operation.

Mr. Geary: That is all.

Redirect examination.

By Mr. Scoll:

[fol. 266] Q. Now, is this Hunt Brothers' cargo always drayed from Ninth Avenue to Encinal?

A. It is not. Certain of it goes direct to their Hayward plant.

Q. You talk about these cars of a variety of canned goods; are you talking about pool cars?

A. I don't know whether they would be designated as that or not.

Q. These cars are Hunt Brothers' cars and they are delivered to you and transported by you and re-delivered as cars, are they not? You don't break them up?

A. In many cases they are merely LCL shipments, as far as we are concerned.

Q. But they are delivered entirely to Hunt Brothers?

A. Yes.

Q. How often did you say they were drayed over from Ninth Avenue to Encinal?

A. That is something else that would have to be checked for an accurate statement.

Q. Well, is it something that happens every day?

A. We don't have that many boats.

Q. Does it happen once a week?

A. Possibly once every two weeks.

Q. If that happens once every two weeks, however—that is confined to Hunt Brothers, isn't it? In other words, you [fol 267] don't dray cargo from Ninth Avenue to Encinal, for all your consignees to whom you give Encinal billing?

A. That is true.

Q. Just a few of them?

A. Those that request it.

Q. I asked you, is it few or many?

A. I would say a few.

Mr. Scoll: That is all.

Recross-examination.

By Mr. Geary:

Q. You don't do it generally, because it is more economical for the McCormick Steamship Company not to do it, isn't that true?

A. That is true.

Redirect examination.

By Mr. Scoll:

Q. And the consignees accept delivery at Ninth Avenue?

A. That is true.



Mr. Scoll: That is all.

Mr. Geary: That is all.

Examiner Basham: You are excused.

(Witness excused.)

Mr. Scoll: Mr. Burley.

R. F. BURLEY resumed the stand and testified further as [fol. 268] follows:

Direct examination.

By Mr. Scoll:

Q. You have been previously sworn, have you not, Mr. Burley?

A. Yes.

Q. I show you now a memorandum addressed by Mr. James A. Lunny, vice-president and director of operations, to you, dated June 23, 1936. Will you read that over, please?

A. (Witness complied.)

Q. Do you recall having received that memorandum?

A. Yes, I do.

Mr. Scoll: I would like to offer it for the record.

Mr. Geary: I will make the same objection that I have heretofore made, Mr. Examiner, to the effect that this is an inter-office communication between two representatives of the McCormick Steamship Company, and as such is not binding on the Encinal Terminals.

Examiner Basham: It will be received as Exhibit No. 26. Objection overruled.

(The memorandum referred to was marked "Commission's Exhibit 26" and received in evidence.)

By Mr. Scoll:

Q. Now, this letter is very short and I want to read it to you and ask you a question or two about it. This is from [fol. 269] Mr. Lunny, and it says:

"Yours of June 19th regarding Encinal Terminal calls coastwise.

"We appreciate the situation intercoastally and realize we will have to continue to call at Encinal Terminal for coastwise cargo. However, do you think there is any chance of taking any part of the action that we discussed at our evening meeting, that is, elimination of service charge when vessels do not call at Encinal Terminal because of insufficient quantity, etc."

Now, first, Mr. Burley, what was your letter of June 19th regarding the Encinal Terminal calls? Do you recall that letter?

A. I don't know. I would have to see it. I don't remember it.

Q. Well, do you recall the discussion that Mr. Lunny refers to, which you and he had about these terminal service charges?

A. I remember it in general.

Q. Now, what action did you and he discuss?

A. The question of whether we might eliminate the payment of the service charge when we didn't call our ships at Alameda, from the standpoint of saving expense to our vessels.

[fol. 270] Q. Saving the service charge?

A. Yes.

Q. And what did you and he propose to do?

A. Well, the only proposal was that in this exhibit, where he asks what I think we can do, and I told him.

Q. Did you discuss how you were going to do it?

A. No, because that letter or memorandum clearly indicates there wasn't any decision reached. We just talked about it and that memorandum calls for a decision.

Q. He says:

"However, do you think there is any chance of taking any part of the action that we discussed \* \* \*"

that is, the elimination of the charges.

Now, you and he certainly discussed some method of bringing about an elimination of the charge, didn't you?

A. Not necessarily. He brought it up from the standpoint of what it cost the vessel.

Q. I know he brought it up.

A. And I answered what I thought we should do about it.

Q. How were you going to do it?

A. Well, the way it worked, by not doing it.

Q. Now, what methods did you discuss to eliminate the charge?

A. Well, one way——

Mr. Geary: Now, just a moment. I am not particularly [fol. 271] interested——

Mr. Scoll: I think the witness is following my question.

Mr. Geary: I don't think he is.

Mr. Scoll: Oh, yes, he is.

The Witness: Well——

Mr. Geary: Just a moment, please.

If this were an investigation of the McCormick Steamship Company, it might be a different situation, in so far as the discussion which took place——

Mr. Scoll: Not so far as the facts are concerned, Mr. Geary.

Mr. Geary: Just a moment, Mr. Scoll——

Examiner Basham: Let us not have so much argument. Read the question back.

(The question referred to was read by the Reporter.)

Mr. Geary: I am objecting, not only to the question, Mr. Examiner, but to the entire line of questions as to what discussion took place between Mr. Burley and Mr. Lunny.

Examiner Basham: Objection overruled.

A. Well, I will have to admit my memory is not so good that I know everything we talked about in that particular meeting.

By Mr. Scoll:

[fol. 272] Q. Let us have your memory about the service charge. That is all we are interested in here. You have stated that you and he discussed the elimination of the charge. Now, how did you intend to eliminate that charge? How did you intend going about eliminating it?

A. The only way I would have known then, or know now, to do it, would be to cancel the rates in the tariff except on direct call.

Q. And did you and he discuss, or did you consider at that time, that if you were to eliminate this service charge by canceling the direct calls in your operation, that it

would have any effect on your getting business from Cal-pack?

A. We discussed what effect it would have on our getting business from the Encinal Terminals.

Q. That is not my question.

A. Not specifically the California Packing Corporation. They are not the only account at Encinal Terminals.

Q. You carry tonnage for Calpack in coastwise and inter-coastal—in both your coastwise, intercoastal, and also your offshore service, don't you?

A. Yes.

Q. Did you discuss any or all of that tonnage and the possibility of losing it if you dropped the Encinal billing?

Mr. Geary: I submit that the question has been asked and answered, Mr. Examiner.

[fol. 273] Mr. Scoll: No, it has not been answered.

A. I can answer it the way we did. We discussed the California Packing account and all other accounts that operate out of Encinal Terminals.

By Mr. Scoll:

Q. I am confining myself to the Calpack account.

A. I couldn't say at this time that we discussed that account specifically. My memory doesn't go back that far.

Q. You mean that you don't think that when you discussed, or when you considered eliminating this service charge, that you considered the possibility of losing Cal-pack's business on all your services?

Mr. Geary: That is certainly argumentative, Mr. Examiner.

Mr. Scoll: I am asking whether that was in his mind or whether he discussed it with Mr. Lunny.

Mr. Geary: I think we ought to draw the line, in all seriousness, some place, and when the witness says he discussed California Packing Corporation as one of the shippers or one of the consignees of cargo over the Encinal Terminals, I think that is an adequate answer to the question. You cannot limit it, as Mr. Scoll is very obviously apparently trying to do, to limit this particular question to the California Packing Corporation alone.

Mr. Scoll: I am not. All I want to bring out, Mr. Exam-[fol. 274] iner, is to find out whether the McCormick offi-

cials, in considering the elimination of this service charge, considered not only whether they would lose the Calpack's business coastwise, but also the Calpack's business that they carried in their other services.

Mr. Goary: Then I object to the restriction of this thing to the California Packing Corporation, because that is not the witness' testimony.

Examiner Basham: Objection overruled.

By Mr. Scoll:

Q. You think you have fully answered my inquiry on that?

A. I have answered it to the best of my ability.

Q. Now, after you and Mr. Lunny discussed this elimination, did you take it up with the Encinal people?

A. I did not.

Q. Have you ever discussed with the Encinal people the elimination of this service charge where the vessel does not call at Encinal and where the cargo is discharged and delivered at Ninth Avenue?

A. I don't recall any discussion since we renewed calling our vessels there in December—was it 1936 or 1935?

Q. And you still pay the service charge?

A. Yes, sir.

Q. Do you pay them a dockage charge?

A. No, only when vessels call.

[fol. 275] Q. Do you pay any other terminal service charge when you do not call there or discharge or deliver cargo there?

A. I don't think we do. I don't know of any case.

Q. Encinal is the only one?

A. Yes.

Examiner Basham: Just exactly what do you mean by a service charge? What is the nature of the service? Is it for dockage, or handling, or wharfage, or what?

The Witness: It is comparable to a wharfage charge at some ports. There are ten individual items that go to make up the service charge that were brought out in the California Railroad Commission's recent hearing, but it takes in trucking, it takes in lights, it takes in the pier rental, everything in the way of overhead, the maintaining of clerical forces, and everything on the dock to operate the facilities.

Examiner Basham: That is an over-all charge for all terminal facilities?

The Witness: That is right. Up in Portland and Seattle for the same service there is a charge, and it is called a wharfage charge, but it covers identically the same thing.

By Mr. Scoll:

Q. Now, Mr. Burley, you do a considerable amount of business with the California Packing Corporation in all your services, do you not?

[fol. 276] A. Yes, we do.

Q. You wouldn't like to lose that business, would you?

Mr. Geary: What difference does that make, Mr. Examiner? I object on the ground that it is incompetent, irrelevant and immaterial.

Examiner Basham: I think that is a proper question.

A. I wouldn't want to lose it as long as it is profitable business.

By Mr. Scoll:

Q. And you would do anything that is within reason that you could to hold that business, if you had to?

A. As long as it was legal and I still had some margin of profit.

Mr. Scoll: That is all.

Cross-examination.

By Mr. Geary:

Q. I wonder if you would mind, Mr. Burley, for the purposes of the record, giving us the various charges by tariff designation that are assessed against a ship or against a cargo in calling at the port of Oakland?

A. I will have to ask a question before I can answer that. Do you mean calling at Ninth Avenue at Oakland, or calling at any Oakland dock?

Q. Let us take it at Ninth Avenue first, and then we will [fol. 277] take it at the other docks.

A. Ninth Avenue is a different situation than the others because of this assignment that we have with the Port of Oakland.



Mr. Geary: I appreciate that.

Mr. Scoll: I am willing to stipulate with you that the tariff of the Port of Oakland can be put into this record. In fact, we are going to offer it a little later on.

Mr. Geary: Has that got a definition of what the service charge consists of?

A Voice: Yes.

By Mr. Geary:

Q. Now, in view of the fact that the service charge has been involved in this situation, we will take up a delivery at Encinal Terminals by one of the McCormick ships calling direct. The charge as made against the McCormick Steamship Company by the Encinal Terminals on such a ship would be what? A dockage charge?

A. The ship would pay a dockage charge; the ship would pay a service charge. As far as I can recall, all the other charges would be assessed against the cargo. There would be car loading, if such was involved; there would be tolls; and there would be demurrage, if the cargo stayed on the dock after the free time.

Q. Now, taking the situation with respect to the McCormick Steamship Company's operation at its own dock at Ninth Avenue with one of its own vessels, what charges would you eliminate from the charges that you have already given?

A. Well, there actually isn't any elimination. As I testified yesterday, that service charge is still extant in so far as our ships are concerned.

Q. Would there be a dockage charge paid in that case?

A. I believe so.

Q. Against the ship, for the privilege of coming alongside the dock?

A. Yes.

Q. That would go to whom, the McCormick Steamship Company?

A. Oh, no. I will have to ask—the Port of Oakland receives it.

Q. And then the McCormick Steamship Company would get the car loading, if the car required car loading?

A. We would get the car loading, yes.

Q. And the demurrage, if there was any demurrage, would go to whom?

A. The Port of Oakland.

Q. The Port of Oakland?

A. Yes.

Q. Now, if the McCormick Steamship Company called one of its vessels direct at the Outer Harbor dock, would those charges likewise be assessed against the ship and the cargo? [fols. 279-548] A. It would be identical with Encinal.

[fol. 549] HOWARD G. ADAM was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Will you tell the reporter your name, please?

A. Howard G. Adam.

Q. What is your occupation?

A. Traffic Representative, Port of Oakland at San Francisco.

Q. What are your duties?

A. Solicitation of cargo; generally representing the municipality of the Port of Oakland.

[fol. 550] Q. How long have you occupied that position?

A. About six and a half years.

Q. On or about January 26, 1939, were you soliciting tonnage to make up a sufficient quantity for direct call at Oakland by the MS Cadrella?

Mr. Jones: Will you have the record show that Mr. Adams is here under subpoena from the Commission?

Mr. Scoll: Oh, yes.

A. I was.

Mr. Scoll: Mr. Adam is here under subpoena.

By Mr. Scoll:

Q. How much cargo were you soliciting for that particular shipment?

A. Well, on the European vessels we are accustomed to try to secure a minimum of 150 tons for east bay call. In other words the European Conference Regulations call for

a minimum quantity of that amount to make a call at our dock.

Q. Did you have a part of that minimum already committed?

A. I did.

Q. But you still needed to get a certain amount?

A. That is true.

Q. How much did you need to get?

A. Oh, roughly 25 tons.

Q. And did you solicit the A. V. Williams Company for that 23 tons?

[fol. 551] A. I did.

Q. To whom did you speak there?

A. Mr. Hinde.

Q. And did Mr. Hinde tell you you might solicit the Frank Wilson Company for that amount of tonnage?

A. That is true.

Q. And did you solicit the Frank Wilson Company?

A. I did.

Q. And were the goods delivered to Outer Harbor?

A. That's true.

Q. And then what happened?

A. A day or so later I received a telephone call from—I believe I had lunch with Mr. Hinde and Mr. Hunter of Frank M. Wilson, and at that luncheon I was informed that there were difficulties and Encinal was aware of the shipment, and that they thought that everything would be cleared up, but that Encinal were annoyed and had learned that the shipment was moving to the Outer Harbor Terminal or had moved to the Outer Harbor Terminal.

Q. Well, what happened at this particular shipment?

A. About the following day Mr. Hinde telephoned me and asked if we wouldn't release the shipment to the Encinal Terminals. It was a rather unusual procedure, and I asked why. And he stated that Encinal had threatened to write a letter to Chicago and it might mean the loss of his position.

[fol. 552] Mr. Geary: I am going to object to that, Mr. Examiner, upon the ground it is hearsay, unless it is the purpose of Mr. Hinde to—

By Mr. Scoll:

Q. (Interrupting :) Did he tell you that?

A. He did.

Q. You are testifying to actually what he told you?

A. Yes.

Mr. Geary: Even so, that would not eliminate it from the realm of hearsay, Mr. Examiner.

Mr. Scoll: I am not seeking to prove that Mr. Hinde was going to lose his job.

Mr. Geary: Nor are you seeking to indicate that Mr. Hinde has authority to bind the Encinal Terminals by any such statement. Is that correct?

Examiner Basham: Objection overruled. Go ahead, Mr. Scoll.

Mr. Scoll: I am merely asking the witness to repeat the conversation.

By Mr. Scoll:

Q. Was this tonnage subsequently transferred to Encinal?

A. It was, according to my understanding.

Q. And how was it transferred?

A. By truck, I believe.

Q. Did you make any effort to obtain how this trucking cost from Outer Harbor to Encinal was handled, or who [fol. 553-563] paid this trucking cost?

A. Yes. I was annoyed at losing the shipment, and I specifically asked Mr. Hinde if he was paying the cost of transfer from our dock to Encinal. He advised me that he was not.

Q. Did you make any other inquiries?

A. Yes. I asked the agents for the Donaldson Line, or particularly Mr. Brainard, of that company, if he was absorbing the cost of transfer, and I was advised that he was not.

Q. Did your Port of Oakland pay the transfer cost?

A. Not to my knowledge.

[fol. 564] T. G. DIFFERDING was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Mr. Differding, will you give the reporter your full name, please?

A. My name is T. G. Differding; business address San Francisco, California.

Q. In this proceeding your services have been engaged in the Maritime Commission as a special expert?

A. That's right.

Q. Have you prepared a statement?

A. I have.

Q. Will you read the statement?

A. I have had twenty-one years experience in traffic and transportation matters. Starting in 1919, I was employed in various capacities by the Southern Pacific Company at points on its Western Division for nine years; then three [fol. 565] years in industrial traffic work for the Standard Sanitary Manufacturing Company which also included some six months in charge of plant production; then about two and one-half years in charge of rates and operations for one of the major common and contract motor truck carriers in northern California, Oregon and Nevada which included the making of cost studies on truck operation; then one and one-half years with the Parr-Richmond Terminal Corporation, a respondent in this proceeding, as Traffic Manager as well as handling operations during part of this time; then about five months as Secretary of the Marine Terminal Association of Central California, comprised of public utility wharfingers on San Francisco Bay who are respondents in this proceeding; then one year as Assistant Engineer in the Transportation Department of the California Railroad Commission which time was devoted almost exclusively to an investigation and development of cost studies on the operation of public utility wharfingers on San Francisco Bay for rate-making purposes and the establishment of rules, regulations and practices in connection therewith; then three and one-half years as Manager of the Traffic Department for the Oakland Chamber of Commerce. On January 15 of this year I returned to the California Railroad Commission as an Examiner in the Transportation Department and at the moment am on a leave of absence, being temporarily employed by the United States Maritime [fol. 566] Commission.

In this proceeding the United States Maritime Commission is going over the same ground, at least to some extent, that the California Railroad Commission did in 1935-1936, except that here the Maritime Commission has also named the publicly owned and/or operated marine terminals as

respondents. As the result of many extended hearings and conferences, involving many of the private operators as well as some of the public operators, which had from time to time dealt with certain phases of marine terminal operation it was necessary for the California Railroad Commission to institute an investigation on its own motion into the rates, rules, regulations, tolls, charges, rentals, classifications, contracts, practices and operations, or any of them, of the privately owned and or operated marine terminals on San Francisco Bay, in order that the problem as a whole would be reviewed and appropriate orders issued.

Dr. Ford K. Edwards, then employed as Transportation Economist for the California Railroad Commission, was assigned the task of making a study and report with recommendations to the Commission in the investigation known as C. R. C. Case No. 4090. I was employed by the California Railroad Commission as an Assistant Engineer to assist Mr. Edwards.

After more than three months of study we prepared a document entitled "Preliminary Report Providing a Statement of the Marine Terminal Problem in the San Francisco [fol. 567] Bay Area, With Supporting Data, Case No. 4090" which was introduced in that proceeding as Exhibit No. 1.

Before proceeding with my testimony, I should like at this point to introduce in this record a copy of that preliminary report just referred to.

Mr. Townsend: May I ask for what purpose this exhibit from the Railroad Commission Proceedings is introduced? In other words, what I desire to know is what evidentiary value it has in this proceeding; whether it is offered for the correctness of the facts therein set forth, or just for what purpose is it offered and what part of that report is to be considered as evidence in this proceeding.

Mr. Scoll: All of it is being offered at this time for the purpose as just stated by Mr. Differding.

Mr. Townsend: Well now, that is not clear. Can you make that a little clearer for the record? I don't know that it appears in the record yet exactly what this exhibit is.

Mr. Scoll: San Francisco Bay area as it was surveyed by the California Railroad Commission at that time. It is offered for that purpose.

Mr. Townsend: Is it offered for the correctness of the conclusions therein set forth?



Mr. Scoll: Yes, it is.

[fol. 568] Mr. Townsend: That report, Mr. Differding was prepared at what date?

The Witness: January 14, 1936, and purports to set forth the situation as Dr. Edwards and I found it on that date.

Mr. Townsend: And your investigation was made during what period?

The Witness: For three months prior to January 14, 1936.

Mr. Townsend: And the situation with respect to the terminals in the Bay Area has changed considerably since that time, has it not?

The Witness: Yes, sir. And I intend to touch upon that.

Mr. Townsend: I object, Mr. Examiner, to the introduction of that document as setting forth the facts at the time, and I would in that connection—

Mr. Scoll: (Interrupting) It is not offered to set forth the facts at this time.

Mr. Townsend: You are offering it as setting forth the facts. May I ask this further question in support of my objection: Have you, Mr. Differding, made any further field investigation of the Terminal situation in the San Francisco Bay area within the last two months?

The Witness: No, sir. What studies I have made have [fol. 569] been confined to those possible since February 6th, which was the day I started employment with the Maritime Commission, and they have been very limited. However, I will touch upon that later.

Mr. Townsend: My objection, Mr. Examiner, goes to this extent: I have no objection whatsoever to Mr. Differding setting forth and stating in this record any of the facts, but, I think it is improper for him to try to set forth those facts by introducing his conclusions as the result of a study which was made in the latter part of the year 1935, when, admittedly, the facts have changed greatly since that time.

Mr. Scoll: Mr. Differding—

Mr. Townsend: And I think it would be much better if he could set forth the facts as they are at this time rather than trying to set them forth by an exhibit which was introduced in another proceeding some four years ago.

By Mr. Scoll:

Q. Mr. Differding, you assisted in the preparation of this report, did you not?

A. Every part of it.

Mr. Jones: Mr. Examiner, might I ask Mr. Scoll under what section of the Shipping Act we are proceeding in this discussion of wharf demurrage?

Mr. Scoll: Any pertinent provisions of the Shipping Act [fol. 570] of 1916 as amended.

Mr. Jones: As I understand it, the California—

Mr. Scoll: (Interrupting) And I would suggest, if you have any objections as to the conclusions that may or may not be reached, you have excellent opportunity to present them in argument.

Mr. Jones: No, I have not stated my point yet, Mr. Scoll. As I understand the call of this hearing, it was limited to Sections 15, 16, 17 and 20 of the Shipping Act; and I cannot find any provision in any of those sections which touches upon the rates of terminal operators. On that ground, Mr. Examiner, I object to the reception of this report and any other testimony on the subject of wharf demurrage on the ground that it is incompetent, irrelevant and immaterial.

Mr. Townsend: May I make this further statement, Mr. Examiner? It is my understanding that this study that is now being offered, namely, exhibit No. 1 of the California Railroad Commission, case No. 4090, covers many subjects in addition to wharf demurrage, which is the subject, as I understand it, that is now under discussion.

That is correct, is it not, Mr. Differding?

The Witness: It covers all phases of terminal operations, that is, those conducted by the private terminals in San Francisco Bay as of 1936. However, I want to point out [fol. 571] that there has been a great deal of discussion already on this record as to various other types of charges, and this explains them, I think, in quite a detailed extent. My testimony, however, in this proceeding, is directed towards the wharf demurrage matter and its related subject: Free time.

Mr. Townsend: Then, is this offer of this exhibit to be limited to the portion thereof concerning wharf demurrage?

The Witness: I don't know what counsel's pleasure is.

Mr. Townsend: And free time connected therewith.

The Witness: I don't know what counsel's pleasure is, but my purpose was to put it all in in its entirety.

Mr. Townsend: May I ask this further question:

At the time the United States Maritime Commission was making its investigation, did not the California Railroad Commission by statute specifically have jurisdiction over the reasonableness of the charges of the private terminals that were under investigation?

Mr. Scoll: I don't think the witness has to answer that question. That is a conclusion of law. And I might add that the longer we take in stating argument that could very well be stated later on brief, the longer this proceeding is going to last. I think we had better go on.

[fol. 572] Mr. Townsend: May I say—

Examiner Basham: Just a moment. I think I have heard enough. The objections I have heard seem to go to the weight of the evidence rather than the admissibility, so I will admit the exhibit as exhibit No. 60.

(The document, preliminary report of the California Railroad Commission, referred to, was marked "Commission's Exhibit No. 60" and received in evidence.)

Mr. Kilkenny: Mr. Examiner, I want to make the same objection that has been voiced here by Mr. Jones on behalf of the Respondents whom we represent, representing the State of California and the Board of Harbor Commissioners. I make the same objection, and particularly I want it to apply to the admission of this exhibit now offered.

Mr. Jones: To save time, may it be understood that my objection then goes to this whole line of testimony?

Examiner Basham: Yes.

Mr. Kilkenny: And may it be understood that my objection goes to this whole line of testimony?

Examiner Basham: Yes, sir.

Mr. Townsend: I would like to have that same understanding.

Examiner Basham: Yes, sir.

Mr. Vaughan: On behalf of all the parties you represent, Mr. Townsend?

[fol. 573] Mr. Townsend: Yes.

Examiner Basham: Proceed, Mr. Differding.

The Witness: It was the desire of the California Railroad Commission to treat with the marine terminal problem in two steps. The first step was to prepare and present a statement of the problem and based upon such facts necessary to support a preliminary analysis. Exhibit No. 60

was submitted as such a statement. The second step was to be the preparation of a final report with recommendations based upon the completion of a thorough and exhaustive analysis by the Commission's staff and the presentation of evidence by all interested parties during the hearings. As will be indicated during my testimony both of these steps were followed in very minute detail.

The data appearing in Exhibit No. 60 was drawn from various sources, including field surveys of the respondents' facilities, interviews with executives and officers of the private and public marine terminals, steamship companies, stevedoring companies, warehouse companies, and other interested parties, and the testimony and exhibits involving marine terminals directly or indirectly, those were all examined, together with the tariffs and annual reports filed by said respondents.

We found that the principal problems facing the terminals were insufficient revenues and the diversion of tonnage from [fol. 574] one port to another through the absorption of differences in transportation costs with competing facilities.

Part I of Exhibit No. 60 consists of 129 pages and presents the problem as it existed in 1935 under 22 topic headings, and Part II presents supporting data from pages 130 to 185 together with 14 tables and 2 maps under 21 topic headings.

We were unable to find any guiding set of principles which had been used in the determination of rates or charges assessed against the two users of the terminal services, namely, the carriers on the one hand and the shippers and receivers of cargo on the other hand. No record could be found of any cost analysis used to develop and justify existing rates, with the exception of some cost studies prepared for the purpose of showing inadequacy of wharf demurrage and car-unloading charges. Practically every rate or charge was questioned by some party as being unreasonably low, or too high, or otherwise improper.

As stated at pages 8, 9 and 12 of Exhibit No. 60, it appeared essential that in order to arrive at a fair and reasonable basis of charges for the respective services offered by the terminal operators, there should be determined, first, the specific cost of rendering the various services, and secondly, the value of each service to the user—in other [fol. 575] words, what the traffic will bear. In addition, competition and tradition were two more factors found pres-

ent in the terminal picture and which could not be ignored.

As Exhibit No. 60 is not in any way involved in the explanation and discussion of the various topics covered therein, and as my testimony is largely, if not entirely, in connection with wharf demurrage and/or wharf storage together with the matter of free time, I shall confine myself to the latter subjects.

At pages 61 to 65 of Exhibit No. 60, we discuss the matter of wharf demurrage and wharf storage. All of the general cargo terminal operators in the San Francisco Bay Area claimed the existing charges were unsatisfactory and none were able to or even desired to recommend them because of their depressed level. However, the fact is that no changes of any consequence have been made in the rates or charges since 1935 to date because of certain factors, even though the rendering of the service has become more expensive.

Mr. Geary: May I break in? Are you, in your statement, going to designate what you mean by the words "certain factors" as having prevented changes of any consequence later on in your testimony?

The Witness: Yes, I intended to do that. I will do it now, if you want.

[fol. 576] Mr. Geary: No. It is all right.

The Witness: In our conclusion we expressed the belief that wharf demurrage charges should be upon a compensatory basis and that the shipper or receiver should be required to indicate by some method or other whether he wanted his goods held on wharf demurrage or moved into wharf storage on a period basis plus a handling charge, so that the losses to the terminal operator and the gamble he is required to take upon the length of time the goods remain on the terminal would be removed. Tables Nos. VII to XIV inclusive of the exhibit show a comparison of wharf demurrage charges and warehouse storage charges after expiration of the free time period on specific commodities and Cargo, N. O. S. as assessed by the San Francisco Bay terminals and warehouses and the Port of Stockton. The wide differences in charges then appearing in the existing charges are apparent and such differences are still generally in effect.

At pages 66 to 67b of Exhibit No. 60 we discuss the matter of free time which is the period allowed for assembling cargo



for outbound-water movement or for removing cargo discharged from water craft before the assessment of wharf demurrage or storage charges.

This subject has been of concern to the terminal operators, as beginning with an allowance of 3 or 5 days, free time has been extended for one reason or another to ten days [fol. 577] and in certain circumstances to twenty-one days. In fact, certain of the terminals publish in their tariffs an indefinite or unlimited free time period when vessels are delayed under specified conditions or otherwise. Thus, without any compensating revenue, the most valuable operating space on the floor of the transit sheds is deprived of any effective use in the latter case and to a material extent in the former case. Here we took occasion to suggest that the free time period should be shortened to less than the existing 10 days. A comparison of free time periods at various Pacific Coast ports is indicated at page 67a. And that includes ports beyond San Francisco Bay. In so far as San Francisco Bay terminals are concerned, what is there shown for 1935 is still in effect today.

Four months after our preliminary report on the marine terminal problem on San Francisco Bay was prepared (received in this proceeding as Exhibit No. 60) we completed the further analysis of the problem and submitted a final report to the California Railroad Commission, entitled "Final Report Providing Recommendations in the Matter of the Marine Terminal Problem in the San Francisco Bay Area, with Supporting Data, Case No. 4090", and which was introduced in that proceeding as Exhibit No. 14.

At this point I should like to introduce in this record a copy of our final report just referred to.

[fol. 578] Mr. Townsend: I desire to make the same objection as heretofore made.

Examiner Basham: Overruled. It will be received as exhibit No. 61.

(The Final Report referred to was marked "Commission's Exhibit No. 61" and received in evidence.)

The Witness: As stated in our letter of transmittal which appears at the front of Exhibit No. 61, we found the problems confronting the terminal operators to be primarily threefold, first, inadequacy of revenues, second, diversion of tonnage through absorptions, and, thirdly, discrimina-



tions between the various users of terminal services, because of unduly low rates or, in some cases, high rates.

Deficits were caused principally from sharply increased labor costs and rate reductions resulting from the keen competition between the various public and private terminal operators for ships and cargo.

The first problem of insufficient revenues involved the whole rate structure and as *been* previously *been* pointed out, we were entirely without any guiding principles of rate-making to follow in a proper and reasonable determination of this phase of the situation. It therefore, became necessary and we did make a thorough and complete analysis of the operating costs of each service rendered by the private terminal operators handling general cargo on [fol. 579] San Francisco Bay. This in turn necessitated a painstaking study of the proper and equitable division of terminal costs between the users of the facilities, particularly between the vessel and the cargo. In making the study we also had the able assistance of valuation and financial experts on the Commission's staff. We came to the conclusion that the proper factors upon which terminal rates should be based where (1) the cost of providing the service, (2) the ability of cargo or vessel to pay, and (3) competitive conditions.

Upon such a study and a correlation of those three factors, we derived the rates for the various services which were recommended in our final report.

The construction and economic characteristics of each terminal rate and charge are set forth in full detail throughout the final report and summarized in Part III, Chapter IV.

We consistently followed our basic theory that those who used the facilities or labor furnished by the terminal should pay for that use, regardless of whether the cargo arrived by water, rail or truck. Upon following that doctrine through, we arrived at the conclusions and costs set forth in the final report.

As the exhibit shows in the table of contents, Part I contains recommendations as to rates, rules and regulations [fol. 580] under appropriate topic headings. Part II contains recommendations as to tariff absorptions and allowances, and Part III contains supporting data, and followed by a description of maps and diagrams inserted for purpose of illustra- and information.

With respect to the matter of wharf demurrage and wharf storage, we made a physical check of the terminals. Some of these checks covered previous checks made by days for twelve months to find out how much space was occupied by demurrage and storage cargo.

Mr. Townsend: May I interrupt for just a moment? When you refer to making studies of the terminals there in that last sentence, you referred to the private terminals, did you not?

The Witness: This is confined entirely to private terminals. We made no physical checks of the public terminals except that the facilities under assignment, or what you choose to call it at that time the San Francisco Terminals, now called the Golden Gate Terminals, and State Terminals, were using. We did make similar checks there. However, the matter of wharf demurrage and the incidental charges in connection with it, were entirely under the control of the State Harbor Board and we went no further than that. In other words, as far as those two facilities are concerned, it was confined to the services rendered other than the wharf [fol. 581] demurrage or storage matters.

Mr. Geary: Was that because the records were not available to you for illustration by the State Board of Harbor Commissioners, or the Port of Oakland and the Port of Stockton also? Those records were not available to you?

The Witness: That is correct. I don't recall that we specifically asked that from the Port of Stockton. I don't believe we did. But, in any event, we made no study.

Mr. Townsend: And did you make any study of the financial reports of the Public Terminals?

The Witness: No. As closely as could be judged, the floor space occupied by demurrage and storage cargo ran approximately 30 per cent of the shed area. However, in making the checks on the areas occupied by demurrage and storage cargo we found there was also included cargo which was still on hand within the free time period. We further found that some of the cargo was high piled by the terminal operator before the free time period had expired. It was our view in determining the proper cost for use of demurrage or storage areas, that demurrage or storage rates and charges should compensate only for those areas necessary after the free time period had expired, and also that when a toll charge is paid the cargo is entitled to sufficient space

upon the wharf during the free time period without being high piled.

[fol. 582] Accordingly, it was necessary to reduce the figure of 30 per cent by the amount of space that would have been saved had the cargo not been high piled and not within the free time period. The result was an average of 20 per cent of floor space being required to provide demurrage and storage areas within all of the transit sheds. This is referred to at pages 36 to 43 inclusive of Exhibit No. 61, which illustrates the division of terminal costs between the vessel and the cargo used in our study.

Turning now to Chapter VIII, pages 93 to 110 inclusive, of exhibit 61, which explains and analyzes wharf demurrage practices and costs as of 1935, we find little change in the practices or rates and charges today. There is no question, however, that all of the major elements of costs entering into the providing of this service have very materially increased since 1935, the only exception appearing to be carrying charges on the structures and land. It is expected that the respondents in this proceeding will bring the study down to date in this respect by testimony and exhibits from representatives of both public and private terminal operators. If, as we stated at page 93 of Exhibit No. 61, the wharf demurrage rate structure was absurd in 1935, then under existing conditions it falls far short of approaching a compensatory basis.

We found that one of the problems connected with wharf [fol. 583] demurrage was cargo remaining on hand beyond the free time period, where the terminal anticipating that it was going to stay there for a period of time, would high pile the cargo at a cost of approximately 20 cents per ton. Also incur certain other overhead costs of 5 to 10 cents per ton, yet on the following day have the shipper or consignee decide to remove the cargo thus leaving the terminal with a cost of 25 to 30 cents per ton and a revenue of 5 to 7 cents per ton.

The terminal operator is faced with a twofold problem: First, to adjust the rates to a compensatory level, which in some cases means upward, and in other cases downward; and second, to have the rates so reflect the costs incurred as to compensate the terminal regardless of the length of time the goods remain on demurrage or storage. At page 94 of Exhibit No. 61 we stated it was necessary that a minimum increase of 33 per cent in the rates for demurrage be made

if they were to be compensatory under the most favorable conditions.

In determining wharf demurrage costs there are several items to be considered, the first of which is the floor space cost. To do this we found the cost per square foot for every structure used by each of private terminals handling general cargo; subject to the explanation that I made in answer to your question a few minutes ago, Mr. Townsend.

In allocating floor space cost to goods on demurrage we [fol. 584] ran into the problem that an area chargeable to a ton of goods on demurrage is not covered by the goods as it rests on the floor. In other words, if a ton of cargo lies in a shed there has to be charged against that ton not only the area occupied by the goods itself but an additional sufficient aisle space by which a shipper or receiver can direct his motor vehicle unit to the pile, also there must be sufficient space for the jitneys and trailers of the stevedoring concern to operate in and reach the pile.

In practice 30 per cent of floor space chargeable to demurrage goods is used for aisle space, leaving 70 per cent of the *such* space to be covered. However, the 70 per cent is not all revenue producing 100 per cent the year around for the reason that demurrage goods may be honeycombed by partial deliveries leaving vacant space, or working areas required, or not piled to the economical height. These factors indicate a further waste of about 15 per cent of the balance of the floor space. We came to the conclusion that 85 per cent of the 70 per cent remaining after deducting aisle space could be considered as used to capacity the year around at all times, and which is probably high. Thus we arrive at 59.5 per cent of the floor space chargeable to wharf demurrage as the revenue producing area. We have used 60 per cent in our calculations. But this 60 per cent must carry the balance of 40 per cent. The ratio of 60 to 40 is [fol. 585] better, at least as far as we were informed at that time, than the ratio obtained by the average warehouse throughout the country.

The next step was to determine the cost per square foot by breaking down the costs of each of the shed structures used by the private terminals in which goods under wharf demurrage were held. The cheapest over-all cost for any one terminal was found to be 3.55 cents per square foot per month, and we have used that basis throughout our study. This was Howard Terminal and is accounted for by

the fact that the buildings are constructed on solid ground, of brick walls and composition roofs.

At the other terminals studied, we found the average cost per square foot of floor space higher because of more expensive construction costs. Where facilities are constructed upon filled land or upon piling to any appreciable degree, floor space costs rise materially.

The next step followed was to translate the floor space cost per square foot into cost per ton for the various commodities. To do so, it was necessary to ascertain the average height to which the stevedores would pile each commodity. Such heights varied widely depending upon the commodity considered. A table depicting the densities, pile heights and square feet required per ton for each of the principal commodities on wharf demurrage is presented on page 98 of Exhibit 61. However, there again that is as of [fol. 586] 1935 and part of 1936, and some of those pile heights, as the normal one-tier height that the stevedore or truck driver would pile the commodity on the dock, has been changed on certain commodities — of union labor conditions.

Other items of costs are explained at pages 100, 101 and 102 of Exhibit No. 61. First is the cost of checking one ton of wharf demurrage cargo to the consignee or from the consignor. The average cost was found to be 5 cents per ton for one checking, as the prior checking from the vessel or subsequent checking to the vessel was included in the service charge made against the vessel by the terminal.

The second item of cost was the high piling under different conditions and different commodities. Here the average cost on average commodities was found to be 20 cents per ton for piling the goods a second tier high, and an additional cost of 20 cents per ton when piling goods three tiers high. Such costs involve the use of high piling equipment and not the use of manual labor, other than that necessary to operate the high-piling equipment and move the front sacks backward for uniform piling. A tier is understood to mean that height to which the stevedores will pile the goods under normal conditions without employing additional labor. It appears that some changes have been made in the height to which certain commodities will be piled by stevedores today as compared with conditions in [fol. 587] effect during 1935. This would, of course, affect floor space and high piling costs when determining wharf demurrage costs.



By Mr. Scoll:

Q. What are these changes that you have in mind?

A. Well, I am referring, here specifically to the less heights that the stevedores will pile certain commodities today as they did pile or stack the goods back in 1935. The other factors of cost are increases in the dock labor itself, in the dock clerks—that is, those employed actually on the dock, plus the clerical force in the office, plus other administrative expenses, supplies and materials. Those are the main items, the minor ones being payroll taxes, changes in payroll taxes, and increases in taxes on the structures and land.

Q. I was referring specifically to changes that you mentioned in heights to which certain commodities will be piled by stevedores today as compared with 1935. Do you have any specific commodities in mind?

A. I wasn't able to bring all my material here. I can answer that later on. I can't recall at this moment what I had in mind. But I will answer that question in some detail a little later. Does that answer your question?

Q. That is all right.

A. The 20 cents per ton figure just previously given represented the reasonable minimum amount of cost for piling a second tier of goods and breaking it down for sub-[fol. 588] sequent movement to the vessel or land transportation agencies.

High piling of goods on wharf demurrage does not always occur but nevertheless that is no indication that there is not some labor cost involved. Without high piling we found occasional miscellaneous moving of wharf demurrage cargo from one point to another in the transit sheds for various reasons such as providing proper aisle space for stevedoring equipment, clearing an area of small parcels of cargo for use in assembling or discharging large blocks of cargo for vessels scheduled to arrive, removing vacant space in honeycombed piles of cargo through partial deliveries by consolidating such piles, etc. The average cost of handling wharf demurrage goods not high piled was 2.5 cents per ton for this miscellaneous labor.

In addition to the floor space and handling costs, there are present certain overhead costs, which average about 16 cents per ton. We divided these costs into variable and non-variable. Some are incurred at the moment the goods



are placed on a wharf demurrage basis and remain the same regardless of the length of the demurrage period. Such items of expense are accounting and billing, cleaning and sweeping, auditing, etc., and therefore are considered non-variable. On the other hand, other items of expense varies with the length of time under wharf demurrage charges, such as watchmen. In other words, if goods remained on hand for 60 days there would be twice the expense allocated for watchmen than for 30 days. It was necessary to break down the overhead costs on this basis so we could arrive at a proper receiving and delivery charge to cover the non-variable costs to the terminal at the time goods were first placed under wharf demurrage, which was found to be 7.10 cents per ton; and the other overhead costs varying with the period of time goods remain in demurrage, which was found to be 9.17 cents per ton per thirty days. This is indicated at pages 99, 100 and 101 of Exhibit No. 61. It will be noted we have taken the 31 items of overhead expense and broken each of them down to variable and non-variable, with three of the items termed 50 per cent variable and 50 per cent non-variable. That was upon the assumption that superintendence and administration is partly related to the handling costs which are non-variable and partly related to supervision over watchmen and other items of expense extending over the whole period of demurrage.

Taking the wharf demurrage costs just referred to, the difference in cost of high piling earned goods for a sixty day demurrage period and not high piling is illustrated on page 102 of Exhibit No. 61. In constructing wharf demurrage rates, we tested each commodity to determine the cheapest method of demurrage, that is, one tier, or two or three tiers high, based upon the most efficient and economical operation by the terminal. To do so, we took into consideration the average length of time each commodity remained under wharf demurrage charges. The results of this study for various commodities are shown in the table following page 103 of Exhibit No. 61, and which was the method we proposed and recommended to the California Railroad Commission for adoption by the private terminal operators on San Francisco Bay in charging and collecting rates on goods held on wharf storage. Each column of the table is fully explained on pages 103 to 105, inclusive, of the exhibit and needs no further comment.

At pages 105 to 108 we discussed at some length a type of wharf demurrage service rendered on certain accounts by the terminals which pyramided the delivery costs because of numerous small lots being called for out of one or more carloads, such service being substantially comparable to distribution from a public warehouse.

In connection with goods which stay one, two or three days beyond the free time period and not placed on a wharf storage basis, we recommended at page 108 of Exhibit No. 61 that a penalty wharf demurrage charge of 5 cents per ton per day be assessed until such time as the shipper or consignee shall declare the goods for storage. If not so declared after five days, the goods shall automatically go on a 15-day period wharf storage basis with a receiving and delivery charge.

[fol. 591] With respect to the matter of competition for goods held under wharf demurrage and storage, we have treated with this to some degree at pages 109 and 110 of Exhibit No. 61.

Turning now to the question of free time period for the assembling of cargo or removing cargo upon the wharves; this subject was discussed at pages 87 to 92 of Exhibit No. 61 and is, I believe, self-explanatory of the reasons for the proposed changes before application of wharf demurrage or storage charges. We here recommended that the private terminals adopt the San Francisco basis of free time with the exception of intercoastal inbound cargo, which it was felt should be reduced to 5 days instead of 7 days San Francisco. In addition, we recommended that the terminals on the east side of San Francisco Bay should limit the extension of the free time period to 3 days when for account of vessel delays instead of the existing unlimited extension under such circumstances. By "existing" that also includes the present time as well as 1935.

At pages 153 to 188 inclusive of Exhibit No. 61 we have set forth in full the expenses used in the construction of the cost studies which are embraced in the final report. In these pages under three separate headings are shown our determination and allocation of terminal costs, an index of expense items whose allocation is explained, and a state-[fol. 592] ment of the principle of allocating each expense item together with an application of such principle. As stated at page 154, such previous cost studies as had been made in connection with one or two phases of terminal op-

eration, no attempt went beyond endeavoring to determine the direct dock labor with some arbitrary allowances for office overheads, etc. However, as stated in previous discussions in the final report, these unallocated overhead items have accounted for 50 per cent or more of all terminal costs. For us to ignore or make arbitrary allocations of these items would to a large extent nullify the purpose of a general cost study in which we were here engaged. Accordingly we painstakingly charged off every item of cost upon the basis outlined in Part III, Chapter I of Exhibit No. 61. To avoid errors of fact or judgment in so far as that might be possible, the explanation of our allocations of costs were submitted to interested parties up and down the Pacific Coast as well as in other sections of the country. Their criticisms, views and suggestions were all given careful consideration in our breakdown of terminal costs as used and applied to the operations as we found them.

The costs used were for the year 1935, except where average expenditures were required for several years. This was done because of the severe labor troubles and strikes of 1934 and the lower wage scales in effect prior thereto which [fols. 593-599] made any use of figures for earlier years inadvisable.

In the back of Exhibit No. 61 are three diagrams, showing first, a plan of Encinal Terminals. This facility remains the same today as it did in 1936; Second, a plan of Howard Terminal. This facility has been changed to the extent that the proposed transit shed indicated on diagram 2 has been built and put into operation, and pier 2 has been torn down and reconstructed, since 1936. Diagram 3 is a plan of Parr-Richmond Terminal No. 3 in which no changes have been made since 1936. This facility is the general cargo unit of the Parr-Richmond Terminal, the other three units being devoted largely, if not exclusively to the handling of special commodities. Immediately following the three diagrams is a map showing the location of practically all of the respondents' facilities now in operation on San Francisco Bay. The facilities known as Pier 45 in San Francisco and now operated by Golden Gate Terminal is indicated on the map as San Francisco Terminals. Another change since 1936 is that the facility indicated on the map as Rhodes-Jamieson, Ltd. is now the Standard Coal Company.

On October 13, 1936, the California Railroad Commission rendered its decision No. 29171 in Case No. 4090. Certain

portions of this decision has already been introduced into the record in this proceeding as Exhibit No. 7.

[fol. 600] My next exhibit is a document entitled "Proceedings of Twenty-Sixth Annual Convention Pacific Coast Association of Port Authorities, Oakland, California, August 23, 24, 25, 26, 1939." I should like to have that portion of the document starting at the upper left hand corner of page 46 with the words "The next paper on our program is Paper No. 8, 'Uniform Cost Accounting for Ports and Marine Terminals,' by Dr. Ford K. Edwards, Transportation Economist, California Railroad Commission," and continuing through to the lower right hand column of page 50 ending with the words "I think we will get a lot of good out of it." The purpose of offering this exhibit is explained by the fact that it is explanatory of and supplementary to my next exhibit, which will be the cost formula referred to by Dr. Edwards at the middle of the right hand column on page 48 of the exhibit I am now offering.

[fol. 601] By Mr. Scoll:

Q. This statement of Dr. Edwards, Mr. Differding, is an interpretation, an accounting interpretation, of the various items that are contained in the so-called Accounting Formula?

A. That is correct. And I might add that the statement, as it appears in this document, was checked by me with Dr. Edwards and my next exhibit, the cost formula, also, and as that document also shows I fully concurred in the statements there made by Dr. Edwards.

Q. The next exhibit, in effect, supplements the Cost Formula with the explanatory comments as to the items in the formula; is that correct?

A. That is correct, and the emphasis being laid upon developing a uniform cost method of arriving at this same result as to the cost of performing specific services.

Examiner Basham: That will be received as exhibit No. 62.

Mr. Townsend: Before you receive it, I have just been handed a copy of this document called "Proceedings of the convention," and so on. What portions of that are you referring to?

The Witness: May we go off the record?

Examiner Basham: Off the record.

(Remarks outside the record.)

[fol. 602] Examiner Basham: On the record.

(The document referred to was marked "Commission's Exhibit 62" and received in evidence.)

Mr. Townsend: Mr. Differding, you are now about to introduce or offer in evidence certain evidence with respect to a cost study which, as I understand it, will consist of a formula for determining wharf demurrage costs and certain explanatory speech relating thereto. Is that in effect your offer?

The Witness: Yes, except I don't think it is a "speech". It is just a plain explanation of a Cost formula.

Mr. Townsend: As I understand it, the purpose of the Cost formula is to develop or attempt to develop costs of wharf demurrage to be used in connection with the determination of what would be a proper wharf demurrage charge. Is that correct?

The Witness: The formula, if it is followed as outlined, results in that or ends up with that result, as you have stated.

Mr. Townsend: In other words, the ultimate purpose is to develop the level of a wharf demurrage charge?

The Witness: No, no. It has nothing to do with the charges. It is to develop wharf demurrage costs.

Mr. Townsend: All right. Now, what interest has this Commission, if any, in your opinion, in the wharf demurrage costs?

The Witness: I am here to offer the formula. I don't think I am the one to answer that question.

Mr. Townsend: I certainly object, Mr. Examiner, until the relevancy of this cost data to this proceeding is developed. I make that observation and objection not in a spirit of trying to impede this investigation, but in the spirit of trying to shorten it and confine it to matters that are relevant. Now, if we are going to get into some cost formula, a theoretical cost formula that has no bearing or materiality on any of the issues in this proceeding, we are going to waste a tremendous amount of time because, if this matter is presented as it is now proposed to be presented, as I see it, it will be necessary for the terminals to



go back to their offices and spend a considerable amount of time in trying to prepare data to present in evidence along this line and to develop their own situation with respect to this cost data and anything else along this line that may be presented. It will necessitate, as I see it, a further hearing and possibly a considerable amount of additional evidence and controversy.

I think before we get into that, in the interests of everybody here concerned, it would be advisable to determine whether this has any relevancy to any issue over which the Commission has jurisdiction. I think that should be developed before it is received in evidence.

Examiner Basham: Will you make a very brief answer to that?

Mr. Scoll: I think I can.

The cost of wharf demurrage has some relevancy and bearing upon the question of whether or not any particular wharf demurrage rate or practice is discriminatory or preferential or unreasonable to the extent of what would be considered unlawful under the Shipping Act of 1916. It is for that reason that Mr. Differding has prepared this material and will introduce further material on the question of wharf demurrage costs.

Mr. Jones: Might I point out, Mr. Examiner, that a public body is under no obligation to make money in its operation; that its essential purpose is to promote the development of the Harbor in the community that it serves, and that, consequently, they are not interested, as such, in the question of whether or not a particular rate is at cost or compensatory. It might well be promotional.

Mr. Vaughan: That is, of course, subject to whatever jurisdiction the Maritime Commission might have, your Honor?

Examiner Basham: The objection will be overruled and the exhibit will be received as exhibit No. 62.

We will have a short recess.

[fol. 605] (Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Examiner Basham: Go ahead.

The Witness: I now wish to introduce the cost formula just referred to in connection with Exhibit No. 62.

Mr. Townsend: I desire to make the same objection as with respect to exhibit 62.



Mr. Kilkenny: May we have the same objection, too, Mr. Examiner?

Examiner Basham: Yes, sir. It will be received as exhibit No. 63.

(The cost formula referred to was marked "Commission's Exhibit No. 63," and received in evidence.)

By Mr. Scoll:

Q. You had better describe it.

A. This exhibit is entitled "A Formula for the Determination of Port and Marine Terminal Costs for Rate Making Purposes, by Ford K. Edwards, Transportation Economist, California Railroad Commission."

Q. Did you have something to do with the preparation of material in this formula?

A. Yes, sir; I did.

Q. And you worked with Dr. Edwards on it?

A. I checked the accounts with Dr. Edwards and clarified our views, which differed somewhat as to the continuity [fol. 606] of classifying the accounts as they are indicated on the exhibit. However, the viewpoints were all reconciled as stated in exhibit 62. I fully concurred in the formula as presented for the first time to this Port Association.

By the way, I have some more copies of this formula here if some of the parties want them.

As stated by Dr. Edwards at page 48 of Exhibit No. 63 this cost formula is patterned after that developed by the California Railroad Commission in Case No. 4090. Further that the principles of determining terminal costs in the cost formula are those we followed in studying the operation of Encinal Terminals, Howard Terminal, Parr-Richmond Terminals and State Terminal in Case No. 4090; and which were applied when reaching the conclusions stated in our final report and in evidence as Exhibit No. 61.

The cost formula consists of 18 pages and is largely self-explanatory. This is especially so when there is available the detailed accounting and cost finding data contained in Exhibit No. 61. The first one and one-half pages of the cost formula outlines the basic plan of the formula. The procedure to be followed in the use of the formula and the application of the seven schedules which make up the balance of sixteen pages is here explained. Each of the schedules have numerous footnotes which further clarify the use

and application of all the accounts chargeable to the different types of services rendered on a uniform basis [fol. 607] throughout. As indicated in Schedule A, the cost formula is set up to cover the separate costs for only two wharf units. However, should it be necessary to determine such costs for more than two units or services other than those shown on Schedule B, it is only necessary that the form be expanded by adding sufficient pages to cover any number of units or services. This cost formula was distributed and discussed with respondents' operating general cargo facilities some days ago, and I do not believe it necessary to make further comment.

I shall next offer some thirty-odd tariffs, published by the respondents', warehouse associations and terminals located at other Pacific Coast Points.

My next exhibit is entitled, "Tariff Charges of the Board of Harbor Commissioners of the State of California for San Francisco Harbor," et cetera.

Examiner Basham: It will be received as exhibit No. 64.

(The document above referred to was marked "Commission's Exhibit No. 64," and received in evidence.)

The Witness: My next exhibit is the letter from the Board of State Harbor Commissioners, signed by M. H. Gates, Secretary, under date of December 13, 1939, addressed to David E. Scoll, Attorney, Maritime Commission, Washington, D. C. It sets forth the handling and service charges [fol. 608] assessed and collected by the Islais Creek Grain Terminal Corporation for their account as explained by Witnesses Gates and Bell.

Examiner Basham: It will be received as exhibit No. 65.

(The letter referred to was marked "Commission's Exhibit No. 65," and received in evidence.)

Mr. Graham: May we have a copy of that in due course?

Mr. Scoll: Let the record show that we will withdraw it and have a copy made.

Mr. Graham: Thank you very much.

Mr. Vaughan: A copy will be furnished to us, please, Mr. Scoll?

Mr. Jones: That is to every one?

Mr. Scoll: Yes, to all respondents.

The Witness: My next exhibit is entitled "State Refrigeration Terminal Tariff, published by the Board of State

Harbor Commissioners for San Francisco Harbor," covering cold storage warehouse rates applicable to Pier 56.

Examiner Basham: It will be received as exhibit No. 66.

(The copy of tariff referred to was marked "Commission's Exhibits No. 66" and received in evidence.)

The Witness: My next exhibit is entitled "State Terminal Company, Ltd. Terminal Tariff No. 1," naming rates, charges, rules and regulations, and bears C. R. C. No. 1.

Examiner Basham: Received. Exhibit 67.

(The tariff referred to was marked "Commission's Exhibit No. 67" and received in evidence.)

The Witness: My next exhibit is entitled "Golden Gate Terminals Tariff No. 1, C. R. C. No. 1, naming rates, charges, rules and regulations."

Examiner Basham: Received. Exhibit 68.

(The tariff referred to was marked "Commission's Exhibit 68," and received in evidence.)

The Witness: My next exhibit is entitled "Port of Stockton Terminal Tariff No. 3," naming rates, charges, rules and regulations.

Examiner Basham: Received. Exhibit 69.

(The tariff referred to was marked "Commission's Exhibit No. 69" and received in evidence.)

The Witness: I might explain that those tariffs that are filed with the California Railroad Commission, I have checked their official files and find the copies here being introduced are correct. However, as to these public bodies, they have been furnished me with the understanding that they are true and correct copies of the tariffs in effect to-day.

My next exhibit number is entitled "The River Lines [fols. 610-616] Terminal Tariff No. 2-A, C. R. C. No. 37," and the United States Shipping Board No. SB-1- No. 7.

Examiner Basham: Received. Exhibit No. 70.

(The tariff referred to was marked "Commission's Exhibit No. 70," and received in evidence.)

The Witness: This exhibit is offered for the purpose of covering the operation of the River Lines at Sacramento.

The next exhibit is entitled "Board of Port Commissioners of the Port of Oakland, Tariff No. 1," naming rates, rules and regulations applying at municipal terminals of Oakland, California.

Examiner Basham: Received. Exhibit No. 71.

(The tariff referred to was marked "Commission's Exhibit No. 71," and received in evidence.)

[fol. 617]. Cross-examination.

By Mr. Geary:

Q. Mr. Differding, will you state briefly for the record what your understanding was as to whether the recommendations of the California Railroad Commission tariff and traffic representatives which were advanced in the reports, exhibits numbers 60 and 61, ever became effective?

A. Well, the answer is yes and no, Mr. Geary. We will have to consider the separate charges.

Q. What was the general picture that followed the reports that were prepared by you and Dr. Edwards? The decision of the California Railroad Commission pretty [fol. 618] largely followed your recommendations so far as the rates that you recommended, is that not true?

Mr. Townsend: Just a minute. When you are through with the question I want to object.

Mr. Geary: I am through now.

Mr. Townsend: All right. I will object to that upon the ground that it is entirely incompetent, irrelevant and immaterial as to what the Railroad Commission did with respect to these recommendations. I think that we have the facts of record now, and I think that the question is what this Commission is going to do about it, and the Railroad Commissioners are not here to cross examine. I object upon the ground that it is incompetent, irrelevant and immaterial, and I think that the fact that the conclusions set forth in the decision that was offered were excluded as evidence should be further argument in support of my objection at this time.

Examiner Basham: The objection is sustained.

By Mr. Geary:

Q. Did the suggested changes of the California Railroad Commission become effective in the private terminal operators on San Francisco Bay?

A. No. To answer that, Mr. Geary, I will have to go down the charges first, the private operators of San Francisco Bay. In answering your questions, I have reference to the [fol. 619] deep water general cargo facilities.

Q. That is right.

A. And some of these facilities, such as South San Francisco Terminal Company, or whatever happens to the general cargo facilities, is of no interest to South San Francisco Terminal, and the reverse is true. But the general cargo facilities, taking first the Dockage charges, they were put into effect at the private terminals with the understanding that that is not true of the terminals at San Francisco, because that is under the control of the State Board of Harbor Commissioners. But the other terminals—Encinal, Howard, West Coast, Eldorado Terminals, Parr-Richmond Terminals—the dockage charges as found proper by the Railroad Commission were shortly thereafter put into effect. In that matter the terminals found that on some commodities in certain trades that the recommended service charges could not be assessed and they petitioned the Commission for relief from the order, in which the public terminals, such as the Port of Oakland, concurred, and there were some adjustments there. But after some period of time there were some increases made in the wharf demurrage charges; not necessarily speaking generally to the level that the Commission found reasonable, but there was an upward revision.

I have previously stated that, so far as wharf demurrage is concerned and free time, there have been no changes [fol. 620] generally speaking at all. There have been some specific commodities where there has been an increase. I think one is automobiles that I can recall at the moment, and at the same time there may have been offsetting reductions in other things. I would have to look at the tariff to answer you clearly on that. But the matter of car loadings were not touched upon by the Railroad Commission in its decision. However, the terminal operators, plus the so-called independent car loaders, with the tremendous increase in labor costs found it necessary to petition the Railroad

Commission for authority to increase the car loading charges which were subsequently put into effect.

Well, that covers the major elements. The others are some accessorial charges and the others are the same as they were ten years ago.

Q. Is it not true that the action of the private terminals to obtain additional revenue was blocked or stymied by the refusal of the public authorities to come along?

A. Pardon me. In answer to your previous question first, the other major items, tolls, they all found they needed more money last December, and they slapped on ten cents more per ton, so they are all getting it now, and which was the recommendation of the Railroad Commission; that is, all public and private terminals put it in.

Q. At the time that the order became effective or that the [fol. 621] order was issued by the California Railroad Commission, rather, is it not a fair statement to say that the action of the private terminals in increasing their rates, because they could be compelled to increase their rates by the California Railroad Commission, was blocked or stymied by the refusal on the part of the Public authorities to come along with the proposed increases?

A. Yes. I think that is the answer to the reason that there were some four-odd years passage of time before the Commission's decision and the putting in the increased toll charges, and up to the present time there has been no unanimity of apparently opinion or action by the public and private operators with respect to wharf demurrage charges and free time.

There is one exception to that however. That is, the El Dorado Terminal Company took the Commission's decision and embodied it in whole in their tariff. However, in so far as wharf demurrage is concerned, they have never had anything under wharf demurrage, so it doesn't mean anything. Nevertheless, the tariffs do show a 100 per cent compliance with the Commission's order, but, it is a matter of paper rates and not actual movement for handling of commodities.

[fols. 622-626] Q. Do you recall whether in that proceeding, in addition to the objection that was advanced that the California Railroad Commission did not have jurisdiction over the public terminals, there was also the objection that it did not have jurisdiction because of the fact



that the cargo was interstate cargo rather than intrastate cargo?

A. Yes. That was voiced to the Commission.

Q. As an objection?

A. Yes.

Q. Against any prescription of rules by the Railroad Commissioner?

A. I want to say I am not sure that it was voiced on the record. I know it was voiced to Doctor Edwards and myself as field men making studies, but I don't know whether that was actually voiced in the record of the proceeding itself. I can't say that, Mr. Geary, but it was then to Edwards and myself off the record.

Q. In your investigation and preparation of your reports?

A. That's right.

Mr. Geary: That is all.

By Mr. Graham:

[fol. 627] By Mr. Geary:

Q. Mr. Differding, referring to wharf demurrage, what generally would you say was your criticism of the present condition that prevails in the San Francisco bay area concerning the wharf demurrage charges of the terminals which are respondents in this proceeding?

A. Well, there is a great deal of difference in the charges between the terminal operators. There are specific exemptions which make the differences a great deal more pronounced. But, generally speaking, taking, for example, the so-called "penalty" wharf demurrage on your San Francisco piers, as the tariff of the Harbor Board which has been introduced as Exhibit 64 here shows, they charge 25 cents per ton per day weight or measurement, whichever will yield the greater revenue, for the first five days or a part thereof. That is their general merchandise N. O. S. item.

Mr. Graham: That is westbound.

A. (Continuing) And that is applicable to the movement [fol. 628] of cargoes into the wharves for some further movement by water or by land, as compared with a two-cent per ton per day rate at the Eastbay Terminals.

Q. You read a few moments ago, as I recall it, the State Board of Harbor Commissioners' charges, being 25 cents per ton per day. Is that correct?

A. No, pardon me. I should have said 25 cents per ton weight or measurement for the first five days or part thereof as compared with a two-cent per ton per day at the Eastbay Terminals, and what applies generally at the Eastbay Terminals is also in effect at the Port of Stockton.

By Mr. Graham:

Q. May I stop you just a moment? Isn't that rate a westbound rate and not an eastbound rate?

A. Yes. It is for cargo coming into the piers.

Q. From vessels?

A. From vessels.

Q. Can you tell us what it is eastbound?

A. In the eastbound direction the charge is different. There is  $2\frac{1}{2}$  cents per ton weight or measurement whichever will yield the greater revenue for the first five days or part thereof, and then 5 cents per ton per day thereafter. To make the story complete, as far as the cargoes moving into the wharves by water beyond the first five days of wharf demurrage, it is 50 cents per ton for each succeeding period [fol. 629] of five days. However, there is what is called the bulkhead storage which, at the discretion of the chief wharfinger, is applied at the rate of  $12\frac{1}{2}$  cents per ton weight or measurement for each seven days or part thereof. That is a discretionary charge and there is no criteria set up as to what has to happen for the exercise of the wharfinger's discretion, except that it is restricted to this extent: That it has to be cargo which is assembled, not removed by the vessel, such as rejected, left over, or overbooked, or outbound cargo in transit received prior to assembling date of vessel; charge to commence when cargo was placed on pier and continue until receiving date of vessel; and, thirdly, inbound cargo in transit pending final disposition; charge to commence at expiration of free period and to continue until cargo is lifted or removed from pier.

However, it is to be pointed out in this instance that the State Board has some charge of some description against the cargo or vessel at all times and does not entirely waive it as the Eastbay terminals provide in their tariffs and as

the Port of Stockton provided in their tariffs up to the first of this year when they made some radical changes in the language used in the wharf demurrage items, and now that similar unlimited extension has disappeared.

By Mr. Geary:

Q. What particular area of the facility is considered to be [fol. 630] available for the so-called bulkhead demurrage?

A. I think the chief wharfinger is the best man to answer that. I don't know. At the time I was on some of these steamship piers I found different situations; apparently oftentimes at the wish of a cargo owner who was moving the cargo or steamship operator. I don't know of any set pattern. I was never informed that there was any.

Q. But it is not limited, for illustration, to a portion of the dock facility which may be exposed to wind and weather?

A. No, unless that happens to be those commodities which could be put in open areas without suffering any damage from the elements.

Q. But cargoes that would suffer damage from the elements in reality would receive the benefit, perhaps, of that storage inside a covered transit shed?

A. Oh, yes; surely.

Redirect examination.

By Mr. Scoll:

Q. You mentioned there that the application of the bulkhead storage rate is within the discretion of the wharfinger.

A. Yes sir.

Q. Now, does he determine whether the cargo shall carry the wharf demurrage rate or the bulkhead storage rate?

A. The tariff so provides and, as I recall the testimony of the Witness Gates, he confirmed what is stated in the [fol. 631] tariff. It is at the discretion of the wharfinger in exercising his judgment as to whether it shall or shall not be granted, having in mind these three stated conditions here.

Q. Then the tariff does not specifically provide when bulkhead storage is available and when the cargo would have to be charged at the demurrage rate?

A. No. It is not set up in the usual type of a public utility tariff in determining that. This tariff is dated

effective December 1, 1925, and has been — effect for years and years and it has grown up like Topsy and, no doubt, served the purpose many years ago.

Q. When you stated that it was not set up as it usually is in a public utility tariff, what do you mean by that statement?

A. I have reference to those utilities that have to file their rates and charges with some regulatory agency when all this discretion of some official or employee of that utility can be used in determining whether charges are or are not to be applied. They have to be specific. So anybody can understand what they are to be charged and what for.

Q. What storage rate among the private utilities that are under the jurisdiction of the California Railroad Commission would be comparable to the bulkhead storage rate in San Francisco?

A. Well, stated generally, there are only two or three items in the private terminals which have some sort of a [fol. 632] period basis of storage, and that is generally longer than seven days or five days as set forth here. The general practice is to assess storage in the Eastbay terminals on a per day basis as is the situation at both Stockton and Sacramento also.

Re-cross examination.

By Mr. Somers:

Q. Mr. Differding, referring to the State tariff from which you have been quoting, does your copy bear the notation "Amended to February 1, 1938"?

A. Yes. However, the copies that I put into the record here, Mr. Somers, have been amended as to December 1, 1939. However, I should state, so far as this tariff is concerned, on the face of it it says, "Effective December 1, 1925, Amended to" (and then in pencil) "December 1, 1939." But the fact is that some of these rules and in some instances the charges, have not been effective since December 1, 1925, even though they are printed in here, and they do not reflect the correct effective date of some of these charges. For example, over here on page 22 they show these special rates for fertilizer and fertilizer material and general commodities. Those rates, even though printed, were not effective December 1, 1925. They were put in more

or less in recent years to meet what the State Harbor Board felt was Eastbay competition.

Q. On that same page, page 22, there are specific de-[fol. 633] murrage rates shown effective at the Grain Terminal and at the State Products Terminal, are there not?

A. Yes. I was referring to the latter block of rates in my previous answer.

Q. My point is that there are specific rates at the State Terminal and at the Grain Terminal which do not come under the general category of demurrage rates, to which you have been testifying.

A. Yes. I have in mind—Mr. Geary's question was confined to the assigned piers in San Francisco. These are the exceptions. You have I don't know how many piers here, but far in the majority of the assigned piers of the individual steamship lines, and then they have these two terminal companies where they have provided some N. O. S. rates as well as some specific commodity rates to meet competition as they have found it in other areas.

Q. Can you tell me in the tariff where that reference is made specifically to bulkhead demurrage?

A. Yes sir.

Q. As against wharf demurrage?

A. I was referring to the last paragraph on the bottom of page 19 and the first three conditions thereto appearing at the top of page 20.

Q. Reference is not made therein to specifically bulkhead demurrage? It is simply wharf demurrage, is it not?

[fol. 634] A. Yes. That's what they call it there. But, anyway, it has been the common characterization of that type of charge. I don't know how it was derived. I think some of their earlier tariffs stated it as bulkhead demurrage, bulkhead storage. That is what I meant, Mr. Somers: Bulkhead storage or demurrage.

By Mr. Vaughan:

Q. Mr. Differding, do you know whether or not the State Terminal Company in San Francisco assesses a handling charge in connection with any freight in storage on wharf demurrage?

A. Yes sir. The tariff which has been introduced into this record shows a handling charge on cargoes N. O. S. and I believe it is cotton and one or two other commodities,



and a handling charge is also shown at the Golden Gate Terminal for cotton. What happens on other commodities I am not clear, but they have it confined with a rather long explanation to only one commodity, which is cotton at the Golden Gate Terminal.

Q. Those handling charges are retained by the Golden Gate and the State Terminal Company, and the storage and other port charges are turned over to the Board of Harbor Commissioners; is that correct?

A. Yes, because the handling charge is a physical use of labor and they employ the labor and retain whatever profit there may be in it.

Q. Do you know whether or not in connection with any [fol. 635] storage under wharf demurrage by the Board of Harbor Commissioners at facilities other than 45 and 56 there are any handling charges assessed?

A. Well, there are.

Q. I am referring to storage in the open docks.

A. On the open docks?

Q. The assigned docks.

A. No. There are no handling charges on the assigned docks. I understand, however, that there are instances where the chief wharfinger in exercising his discretion on this so-called bulkhead demurrage or bulkhead storage sometimes requires that in the granting of that privilege that the ship or the ship representative or the cargo bear the cost of high piling those goods in order to conserve the space. But except in those instances, which might occur how frequently, I don't know, there is no handling charge or high piling charge or anything involved in the ordinary storage or demurrage on the assigned piers.

Q. Let us go to the other side of the bay and take up first the Port of Oakland. Do you know whether or not in connection with storage of freight under wharf demurrage any charge is made by the Port of Oakland for handling service?

Mr. Scoll: Mr. Vaughn, I wonder whether perhaps those questions could not very properly be addressed to the officials of the terminals involved? I am planning to call each one of them.

Mr. Vaughn: I have no objection. I thought I would ask the questions in view of the fact that these tariffs were introduced through Mr. Differding. But if it is your wish I shall defer my examination.



Mr. Scoll: I only suggest it as a matter of saving a little time.

Mr. Vaughan: Very well. That is satisfactory with me.

A. However, I should mention that in addition to the other types of storage we have another one at the Port of Oakland in the Interharbor area where they have a building designated as "Terminal Building C", where space is rented or leased at so much per square foot, which I would call as 3 cents per square foot, and that is not supposed to involve any labor. This building is removed from the transit sheds and their tariff specifies, I think it is, 60 cents per ton when they perform the physical transfer of the goods between the dock and this terminal building. That's something which is a little different again from the general practice.

By Mr. Graham:

Q. Mr. Differding, in connection with this subject that Mr. Vaughan asked you about—that is, cost of high piling [fol. 637] and moving goods from one place to another for bulkhead storage in San Francisco—do I understand you that the determination of whether the goods shall first be moved from their ordinary place on the dock to another place for bulkhead storage and the determination of whether they shall be high piled at an extra cost is up to the wharfinger in each instance?

A. That is my understanding. In other words, in some instances the chief wharfinger in exercising his discretion as to the granting of the so-called bulkhead rates will ask whoever is responsible for the storage whether it is the vessel or the cargo to high pile it or move it from one place to another, to either save space or clean up some areas that may have some small blocks of cargo.

Q. Or he may not do it?

A. Or he may not do it. That, again, is in his discretion.

Q. There isn't any rule one way or the other?

A. No sir.

By Mr. Townsend:

Q. Mr. Differding, you referred to two types of cargo, as I understand it, on the docks in San Francisco: 1. The cargo which is there under regular wharf demurrage charges; 2.

The other is the so-called bulkhead storage. Is that correct?

A. Yes. But be a little more specific than we were the [fol. 638] last time on that. You are referring now to the assigned piers for all?

Q. Let us confine it to the assigned piers first. Are those two types of cargoes placed in the same area or placed right intermingled with each other; do you know?

A. Well, I have found them so in the few limited times I have checked that point, but I am not the best authority on that. I believe Mr. Gates could enlighten you with what might be the general situation over all these piers. After all, I only made some spot checks, I think it was on about four or maybe five piers, and they have some 50 of them along the waterfront.

Q. Perhaps you can answer this question. Do you know whether the method of handling cargo is the same between the ship and the pile on dock regardless of whether the cargo is to be placed on wharf demurrage or under bulkhead storage?

A. Generally that is true, that the same practices are followed. However, there are instances where the cargo when it is coming in, it is known if it is going to remain there quite some time, and if the permission of the chief wharfinger for the lower bulkhead rate has been secured the economic thing to do is to immediately and in one continuous operation take it off the ship and put it up to its desired height if that is going to be required.

Mr. Scoll: You are still talking about the San Francisco [fol. 639] Board of Port Commissioners?

The Witness: The assigned piers; yes sir.

Mr. Scoll: I want to say again that I am planning to call Mr. Gates and ask him some specific questions about these operations in San Francisco. I think perhaps it might be better to address direct questions that relate to the operations of each of these individual terminals to the people who are most familiar with them.

Mr. Townsend: I just have a few questions here I want to ask. I want to see what Mr. Differding has to say on them. It will only take me a minute.

By Mr. Townsend:

Q. In the case of that last operation to which you refer, where it is placed directly in bulkhead storage from the

vessel, do the stevedores handle it directly from ship's tackle to the place of rest in bulkhead storage?

A. That is the usual practice, yes.

Q. Let us go over to the other side of the bay.

A. My answer is being limited to those observations that I personally made on probably half a dozen or five piers out of the entire number of assigned piers on the water front.

Q. With respect to Encinal and Howard Terminals, did you testify that sometimes cargo which is in transit is placed in one of the warehouses?

A. Well, I don't know whether we mean the same thing by [fol. 640] "in transit," but the practice is to put the goods into warehouse whether it happens to be coming in by land transportation for subsequent distribution or coming off of a vessel to go from the transit area into the warehouse area and there be distributed by some land transportation or, there again, it might go out by water.

Mr. Scoll: What terminal are you talking about now?

The Witness: Encinal Terminals.

By Mr. Townsend:

Q. Does that apply to both Encinal Terminals and Howard Terminal?

A. Yes. They both have the public warehousing operations on their terminal facilities.

Q. Let us take the case of Encinal Terminals.

Mr. Scoll: I still repeat, Mr. Examiner, since we are planning to call each of these terminals, the operating or traffic managers of each of these terminals, that questions specifically directed to the operations of the individual terminals ought to be addressed to those people rather than to Mr. Differding, who has already stated that he only made spot checks on their operations and whose purpose in appearing here is to describe the work that was done by the California State Commission in the San Francisco bay area, and introduce the tariffs and offer general information.

[fol. 641] Examiner Basham: That is enough. Don't you think that would be a better suggestion?

Mr. Townsend: Mr. Examiner, here is an expert on terminal matters.

Mr. Scoll: But you are not asking him questions of opinion.

Mr. Townsend: Pardon me a minute. He has made, as I understand it, an investigation and has put in here a very detailed and elaborate study, and I have just a few questions that go to some of these fundamental questions. I simply want to ask him one or two more questions. I think if Mr. Scoll will let me ask them it will take less time than argument on the matter.

Examiner Basham: Go ahead.

By Mr. Townsend:

Q. With respect to Encinal Terminals, Mr. Differding, it is a fact, isn't it, that there is a so-called warehouse that is really a part of the transit shed?

A. Yes, sir. At the present time that public warehouse area or space is located within transit shed number C and they perform the usual public warehouse functions. And I might mention at this time that Exhibit No. 85 in this proceeding indicates that Encinal and Howard Terminals are parties to it the same as the uptown warehouses.

[fol. 642] Q. Is cargo handled directly between ship's tackle and that warehouse in transit shed C of Encinal Terminals by the stevedores?

A. No sir.

Q. How is that handled, do you know?

A. Well, the warehousing area is blocked off and shut out from all of the open transit space and the stevedores don't enter that facility any more than they do some of the private facilities of these lessees of terminal operators. At least, that has been my observation. If there are exceptions to it, I know of none.

Q. So that in every instance that you have observed at Encinal Terminals, before any cargo is placed in that warehouse in transit shed C it is first taken from ship's tackle and placed at a pile on the dock in another part of the transit shed and then removed by other employees from that pile on the dock into the warehouse space?

A. Yes sir.

Q. Is that last operation that I have described true with respect to cargo handled at Howard Terminal from ship's tackle to space in the warehouse?

A. Well, at the time that I made the physical checks of the transit sheds of Howard, there was no goods on ware-

housing rates in the transit sheds. But, as I endeavored to previously state, they do have in their filings with the Rail- [fol. 643] road Commission two transit shed units also incorporated in their public warehousing operations, and they can if they wish, set up the ordinary warehousing operations within those transit sheds similar to Encinal. But at the times I made the checks, as far as I knew, I couldn't find any warehouse goods within the transit sheds at those times that I happened to be there. So I can't say anything further in answer to your question on that.

Q. What is the situation with respect to goods, if you know, that are stored in some of the back warehouses at Howard Terminal with respect to whether they are handled directly between ship's tackle and that warehouse space by stevedores?

This is my last question.

A. No, they do not. Those buildings are quite a distance removed from the last transit shed and the stevedores before 1934 never went that far.

Examiner Basham: Any further questions?

(No response.)

You are excused, Mr. Differding.

(Witness excused.)

Mr. Vaughan: May I ask for a discussion off the record?

Examiner Basham: Yes. Off the record.

Examiner Basham: On the record.

[fol. 644] Mr. Scoll: Colonel Allin.

---

B. C. ALLIN resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

Q. Have you been sworn?

A. I have.

Q. Are the rates which are published in Stockton Terminal Tariff No. 3 introduced as Exhibit 69 filed with the California Railroad Commission?

A. Only as a matter of information.

Q. Are you familiar with this final report in Case No. 4090 prepared by Dr. Edwards and Mr. Differding, which has been introduced in the record as Exhibit No. 61?

A. Only in a general way. I have never made a detailed study of it.

Q. I want to read to you a brief portion of that Exhibit and ask you a question about it. On page 95 in Chapter 8, the following statement is made: "To sum up it must be noted that out of a given area chargeable to demurrage, whether it is one square foot or 50,000 square feet, 30 per cent of that area is necessary for aisle space and of the balance only 85 per cent is used to that capacity upon which the tariff charges herein recommended are predicated." [fol. 645] Then it sets out a formula, "Total demurrage areas 100%." That is made up of aisles and roadways 30%, cargo areas 70%, and of the cargo areas there are waste areas of 15%, and revenue producing areas equals 85% of the 70%, or 60%. That, I believe is the method by which he arrived at 60% as the area which is useful or useable for wharf demurrage. Would you say that was true of Stockton?

A. I am not certain whether he takes out the large alleyway which is used by trucks which come inside the building.

Q. He has deducted 30% for alleyways and roadways. Do you think that that is approximately right?

A. I think so. I think that is reasonable.

Q. And for waste areas about 15% of the useable cargo area?

A. I believe that is feasible, yes.

Q. You would say that probably 60% is nearly correct?

A. I would think so.

Q. Have direct labor costs increased at Stockton Terminal since this decision was issued, May, 1936?

A. They have.

Q. That would include handling costs?

A. Oh, yes.

Q. How much of an increase, approximately?

A. I don't recall, but I would say probably anywhere from one-eighth to one-fifth.

[fol. 646] Q. In other words, from about 12½ to 20%?

A. Probably so.

Q. And cleaning costs, checking costs similarly?



A. Yes. In fact, all operations generally have increased in cost.

Q. What about the efficiency of labor used in terminal operations? Has that increased or decreased?

A. We have found no difference at Stockton. We have found that our men are going along on as efficient a basis as they did previously.

Q. Do they do the same amount of work on an hourly basis as they did in 1936 per day?

A. I would say that in their general operations, I believe from the comment of stevedoor foremen as well as our own people, that they do at Stockton. I believe we have comparably a favorable situation.

Q. They are paid on an hourly basis, direct labor?

A. Yes.

Q. Payroll taxes, for instance, they have increased since 1936, have they not?

A. Well, we don't have any of that.

Q. Social security taxes?

A. We have none of that. Our employees are prohibited from receiving that benefit.

Q. What other costs do you think have gone up since [fol. 647] that time?

A. Construction costs have gone up, of course. I would say that the replacement of facilities, if that becomes involved, would be more expensive than it was before.

Q. What factor did you consider in establishing the wharf demurrage rate?

A. Picked out of thin air; the rates more or less charged down here without any rhyme or reason otherwise.

Q. In other words, competition is the primary factor?

A. Yes. Competition is the entire thing.

Q. You think that is the proper basis on which the wharf demurrage rates should be established, based on your experience in terminal operation?

A. No, I do not. I think wharf demurrage rates should be based on the fact that the wharf demurrage should not be a revenue producing factor in a transit shed on a wharf. It should be considered only a nuisance and the charge should be a penalty sufficiently higher than comparable storage elsewhere adequate to move the freight.

Q. Nevertheless, of course, the revenues from wharf demurrage are included in the general revenues of the terminal, are they not?

A. I would say comparable to the fine for parking an automobile on the street. I think it is just a fine more [fol. 648] or less. We don't look at it as a revenue producer. I would say it was a quite minor revenue producer in our case.

Q. You would not establish a rate that would be below the cost of the service, would you, in any given case?

A. Unless competition forced me to, I certainly would not. I would make it high.

Q. What are the free time provisions in your tariff? Do you recall them?

A. They are up to ten days free time.

Q. And that is for all trades?

A. Yes.

Q. Do you have exceptions?

A. Oh, no. I would say, just roughly, that that is universal in our case, as far as I know.

Q. No difference in free time for special commodities?

A. Not that I recall offhand. There might be but I doubt it. (Examining exhibit.) Oh, yes. We have certain exceptions. I see here certain bulk—we have, for example, an exception on chrome ore due to the fact that the nature of this commodity seemed to require 30 days for the assembling of a shipment.

Q. Is that an outgoing shipment?

A. That is an outgoing shipment and does not use covered storage. It is outdoor storage.

Q. Do you have many shippers of chrome ore?

[fol. 649] A. We have only one. We have no shipper of chrome ore at the moment.

Q. Have you any other exceptions?

A. No, no.

Q. Are there any other exceptions?

A. No, no. There are no exceptions.

Q. Do you know whether it is a practice among the terminals in the San Francisco Bay Region to be lenient in the granting of free time, interpreting their tariff provisions to that effect?

A. Well, I believe the free time problem on freight which comes in by water is quite different from the problem on freight which comes in to go out by water.

Q. Let us take the outbound first.

A. In the case of the freight which goes out by water, as I understand the method of application, it is the intent

that the 10-day free time provision to prevent shippers from placing their freight on the wharf more than ten days before the scheduled sailing of the vessel. However, if they place it there within the ten days and then the vessel is delayed, I understand that it is not the practice to assess. In fact, we have recently waived considerable demurrage charges of that nature because we have been advised that it is the policy today to do so and it is our feeling that there [fol. 650] should be some definite arrangement made.

Q. Are you speaking now of a particular vessel and particular allowances of extra free time on certain occasions?

A. No. I am speaking of delay to all the vessels, oh, during a rush period of September, and from that time, during the strike, for example, in December and up to date.

Q. Do you mean to state that those extra free time allowances are within or outside the provisions of the tariff?

A. The tariff provides that the port may grant an extension of free time equivalent to the delay of a water carrier due to stress of weather, accidents, breakdowns, or other emergencies. We understand that the "other emergencies" is construed to mean as being late.

Q. That is the tariff you are reading from now?

A. Yes, sir. And I understand the provisions in the other tariffs are fairly comparable.

Q. And you construe that to mean that "other emergencies" would cover just ordinary lateness of the vessel?

A. I understand that is the way it is construed in San Francisco Bay.

Q. Do you construe it that way?

A. I do now; yes, sir.

Q. Since when?

A. Since I found that that was the way it was being construed today.

[fol. 651] Q. When did you find that out?

A. About two weeks ago; two or three weeks ago.

Q. Was that in connection with a particular vessel?

A. That happened to be, yes.

Q. What was the vessel?

A. That was—the inquiry I made had to do with the LENA LUCKENBACH, which I believe was five days late, and the query was put to me regarding our position in demurrage charges and I investigated. I had my associates investigate the Bay and I understood the policy here

was to waive those charges, and we consequently waived them.

Q. And have you ever waived charges similarly in any previous time?

A. Yes. We waived some charges which had been somewhat in dispute, but only in the last two months. Previously we had been collecting them, although we had not had very much of it.

Q. Would you say, then, from your knowledge, that there has been a general practice in the San Francisco Bay Area to be lenient in the assessment of demurrage charges where the vessels are delayed?

A. I don't know whether leniency is the word. Perhaps they have adopted the correct policy. In other words, the purpose of the demurrage is to discourage the shipper from putting his goods on the wharf too far in advance and I believe they have allowed a certain latitude as a [fol. 652] reasonable operating factor for the vessel, and that is the way it has been construed as I understand it.

Q. So in the particular instance of the LENA LUCKENBACH, you just did what you found necessary to give your shippers the same kind of treatment that the other shippers in the Eastbay were receiving?

A. That is so; and in this particular case of outgoing shipments the policy would be for the ship to have to pay that expense, and we would not like to be in a position of having the ships charged for this sort of thing at Stockton unless they were similarly charged at the Bay.

Q. What about inbound cargo? Does the same situation apply?

A. No, it is not. I believe the shipper is billed quite strictly if he does not move his freight within ten days.

Q. Does Stockton operate public warehouse facilities adjacent to the transit sheds?

A. Yes, we do.

Q. Will you describe those facilities?

A. Well, we have 12 brick warehouses which are not physically connected with the transit sheds. They are separated and they are used for the storage of goods that are not in interstate or foreign commerce or elsewhere leased out to other public utilities, such as the Haslett Warehouse Company.

Q. You say they are not attached to, but they are separated?

[fol. 653] A. Yes.

Q. How are they separated?

A. Well, they are separated by a distance of a hundred foot roadway.

Q. Is that a public roadway?

A. Yes.

Q. And you mentioned that certain of these warehouse spaces are leased out. Are any of them leased for industrial purposes?

A. Processing do you mean?

Q. Yes.

A. The nearest that I could come to that would be brandy storage, which is merely a case of aging the brandy. The brandy has to stay there about four years. One of these units is leased to the Haslett Warehouse and it is filled with brandy.

Q. Well, what is the term of the lease?

Mr. Townsend: Pardon me, just a minute. I object to that question, Mr. Scoll. The witness has already testified that that traffic or the goods in those warehouses, are not in interstate or foreign commerce. Obviously, this Commission has no jurisdiction over them and I do not think it is relevant.

Mr. Scoll: That is the witness' conclusion.

Mr. Townsend: And I don't think it is relevant to go [fol. 654] into matters of that kind at this time.

Mr. Scoll: I am sure that the witness was merely stating his conclusion that this brandy was not in interstate or foreign commerce.

Mr. Townsend: May I ask the witness a few questions?

Mr. Scoll: How can it be binding upon us in this inquiry?

Mr. Townsend: Mr. Examiner, may I ask a few questions?

Mr. Scoll: Why don't you wait until I get through?

Mr. Townsend: Because I don't want to go into all this and clutter up the record with something that obviously is not within the jurisdiction of the Maritime Commission.

Examiner Basham: The objection is overruled.

Mr. Scoll: I will put the question a little differently.

By Mr. Scoll:

Q. This lease is for a term, is it?

A. Yes; I don't recall the exact length. I think it is probably ten years or something of that sort. The people

were going to store their brandy at Lodi, but we had some vacant space there and we rented it to them.

[fol. 655] Q. The rental is payable on a monthly basis?

A. Yes.

Q. Do you have any other industrial users?

A. No.

Q. To whom you make leases?

A. No.

Q. There is no other processing performed in these places, such as labeling or assembling of goods and so on?

A. Oh, yes. You see, we put up these structures to make available to canners and producers who otherwise would store their goods in the country at various points where the canneries are, and they move the unlabeled canned goods into this storage and later, I presume, they label it. We do not do any of that operation.

Q. I understand that. And those users hold their leases?

A. Yes.

Q. For terms?

A. Yes.

Q. And payable monthly?

A. Yes.

Q. They pay a monthly rent?

A. Yes.

Q. Is the rental they pay on file as a warehouse tariff? Is it published as a warehouse tariff?

A. No sir.

[fol. 656] Q. Does it ever happen occasionally that these brick warehouses that you speak of have ever been used to hold cargo or freight that is stored under a wharf demurrage rate?

A. Yes. When we don't have room in the wharf occasionally, we use one of these units. In that case, why, the freight is placed there for our convenience and takes the regular wharf demurrage schedule of charges.

Q. How does the wharf demurrage scale of charges compare with the rentals in amount, let us say, per month?

A. Why, you mean higher or lower?

Q. Higher or lower.

A. I would say they are higher.

Q. Are they much higher?

A. No, not very much higher probably.

Mr. Townsend: Pardon me. May it be understood, Mr. Examiner, that my objection goes to this whole line of ques-



tioning with respect to any of the rentals of this type of goods under discussion?

Examiner Basham: Yes sir.

By Mr. Scoll:

Q. What is the wharf demurrage rate under which such cargo would be stored?

A. That depends on the commodity.

Q. Let us say canned goods.

A. Canned goods? A cent and a quarter per day; a cent [fols. 657-662] and a quarter per ton per day.

Q. That would be roughly 37½ cents per ton per month?

A. Yes.

Q. Is your leasehold rental equivalent to—what is that equivalent to per ton per month? Is it purely on a space basis?

A. It is purely on a space basis and we don't pay any attention as to how the space is utilized. In other words, we lease it just as any property owner in town would lease a building.

[fols. 663-671] Cross-examination.

[fol. 672]

By Mr. Geary:

A. Colonel Allin, in regard to the questions that were asked you by Mr. Graham concerning the brandy in that warehouse, the rental charge that you make to the Haslett Warehouse and the warehousing charge which is made by the Haslett Warehouse is such that there is a wide disparity between those two charges, is there not?

A. I don't know. I assume they make a profit. They usually do.

Q. Is the Port of Stockton fundamentally engaged in the operation of the port facilities or is it engaged in the operation of a warehouseman?

A. We do not like to go into warehousing. We are engaged primarily in operating a port.

Q. And in the operation of the Port, the operation contemplates facilities which can be used for the storage of merchandise and the expedition of that merchandise across the dock, either to or from vessels; is that not correct?

A. Yes sir.

Q. Can you give a comparable figure in response to the questions that were asked of you by Mr. Seoll, concerning [fol. 673] the average rate of discharge and loading of cargo in 1934 by stevedores at Stockton, in comparison with the rate of loading and discharging at Stockton, let us say, today?

A. No, I could not. But I understand that the various Awards which have been made have increased the expense to the ships but I could not give you those figures. I don't have them.

Q. But you do know that there has been a very definite minimizing of the volume of cargo that is moving in or out of vessels since 1934, insofar as the average rate per hour is concerned?

A. Well, I understand that there has been a slow-down in a great many places, but, so far as I know, the stevedoring contractors or those engaged in the stevedoring business at Stockton have very definitely not complained of any slow-down at Stockton.

Q. Is that true in comparing 1934 with 1939?

A. Our stevedores were rather green in 1934. I don't know that they had reached any stable condition at that time.

Q. Let me take 1935. You were operating in 1935, were you not?

A. Yes sir.

Q. Would you say that the rate of loading and discharging cargo today is the same as it was in 1935?

A. Well, I have endeavored, Mr. Geary, to say that, so far as I know, the efficiency of the stevedores is fairly good [fol. 674] at Stockton. I don't know that there has been any complaint at all on the stevedoring end.

Q. I am not asking you that. I am asking you whether or not there has been any decrease in the efficiency of the stevedores in 1935 vs. 1939.

A. I think that they are just as good today as they were in 1935.

Q. Have you kept any record of that to determine that with any degree of accuracy, Mr. Allin?

A. I have records recently, but I have no records of 1935 and I am going entirely on the comments of those who employ stevedores.

Q. Without any check at all on your part?

A. Without any check.

Q. Does the Port of Stockton employ any stevedores directly?

A. We do.

Q. Aside from the contracting stevedores?

A. We do.

Q. And have you any experience with respect to the stevedores which the Port of Stockton employs concerning the volume of cargo in and out, 1935 in comparison with 1939?

A. We found that their efficiency is comparably good today as compared with then, but, of course, their wages are not.

Q. Do you agree with the statement that was made by Mr. [fol. 675] Jones today to the effect that there is no obligation upon the public operator of a terminal to make any profit out of that operation?

A. I am afraid I would have to consider what was meant by "profit," before I could answer that question.

Q. I mean a net left over after your expenses have been deducted from your gross operating revenue.

Examiner Basham: Mr. Geary, I believe that is just a matter of opinion or argument.

Mr. Kilkenny: It may be a matter of law, too.

Mr. Geary: Here is a situation where, as I understand it, we are discussing certain charges and whether these charges are compensatory to the Port of Stockton or not.

Examiner Basham: Mr. Geary, it is not a matter that is susceptible of proof. We might have his opinion, but what would it be worth in this investigation?

Mr. Geary: It would be worth this much, it seems to me, Mr. Examiner, because you are considering, and what the Maritime Commission, as I understand in this proceeding, is endeavoring to take jurisdiction over, is not only the private operator, but is, likewise, endeavoring to take jurisdiction over the public operator, providing that the jurisdiction of the Maritime Commission can be found within the purview of the Shipping Act. If that is the fact, and the Maritime Commission is faced with the statement of a public body to the effect that it need not make a profit, whereas [fol. 676] obviously a private operation must make a profit in order to continue to exist, I think that the Maritime Commission is entitled to that expression from the public body.

Mr. Kilkenny: Mr. Examiner, I submit that is largely a question of law; the law under which the Port is organized.

and operated as to what charges are made and what the basis of the charge is. It is a conclusion.

Examiner Bāsham: I think the question is irrelevant, and I will rule that the witness need not answer the question.

By Mr. Geary:

Q. With regard to the wharf demurrage of one and a quarter cents per ton per day, I want you to assume with me, if you will, Colonel Allin; a shipment of canned goods inbound. When that shipment arrives at the Port of Stockton it is taken from the ship's hold and dropped onto the dock at the Port of Stockton.

A. Yes.

Q. And if the owner of the cargo requests it, that cargo will be moved perhaps from the floor of the dock into perhaps one of these warehouses. Is that correct?

A. Yes sir.

Q. And when the cargo of canned goods is put into the warehouse it still continues to take the charge of a cent [fol. 677] and a quarter per ton per day, is that correct?

A. That's correct. The only trouble is that the shipper would never ask us to put it in the warehouse because he would rather leave it on the wharf and not pay for the transfer.

Q. When it is moved under those circumstances, when it is moved from the wharf into the warehouse, what is the cost of the transfer?

A. Depending on the item.

Q. On canned goods?

A. 40 cents a ton.

Q. Suppose the situation is one where the cargo of canned goods is moved off the dock or off the transit shed because the Port of Stockton wants to move it off and put it into the warehouse, let us say, to relieve congestion on the dock; what happens then? Does the shipper pay 40 cents a ton for that movement?

A. He certainly does. That is the only way it would get moved back there. We would simply insist on moving it.

Q. And would charge him for that?

A. Yes.

Q. What service is performed for that 40 cents a ton?

A. Simply to transfer it into the warehouse.

Q. What about piling?

[fol. 678] A. It would naturally be piled.

Q. Would it be high piled?

A. Probably not; depending on the amount of congestion pending at the time.

Q. If it were high piled would there be any further charge beyond the 40 cents?

A. We have a charge in our tariff for high piling. I presume that if it were high piled under the conditions as you outlined them, it would be for our account, though, because we would have space to accommodate it otherwise.

Q. You have had circumstances of that kind arising?

A. No, I don't think so. We have practically no inbound business, as I mentioned a minute ago. It is all outbound.

Q. If there were a situation of that character the expense of high piling would be for your account?

A. Possibly.

Q. Under the conditions where it was being moved off the transit shed because of the possibility of congestion?

A. Probably so.

Q. And have you ever checked to determine whether the cost of 40 cents per ton for moving that cargo from the transit shed into the warehouse is compensatory to the Port of Stockton?

A. Yes, we have.

Q. And what have you found?

[fol. 679] A. We found it is.

Q. That it is compensatory?

A. Yes, sir.

Q. Have you made any checks of that recently to find out if that is compensatory today?

A. This is all within the last six months, as I recall it.

Q. And that has proven that at 40 cents a ton it is compensatory?

A. Yes.

Q. Do you feel that the charge of one and a quarter cents per ton a day is compensatory?

A. Well, now, it depends on what you mean by "compensatory." Mr. Geary, it is my feeling that the cost to ourselves—for example, the operator—of wharf demurrage is the additional costs of cluttering up the dock involved and handling other freight. It has no relationship to the cost of the square foot on the wharf. When you say "compensatory," I say I do not think it is compensatory because

wharf demurrage makes other operations on the wharf more costly.

Q. Because you have to duck around the cargo that is then on the wharf?

A. Yes sir.

Q. And that you do not think then, that the cent and a quarter per ton per day is compensatory?

A. I do not. But I base that not on the cost of the structure [fols. 680-689] but on the cost of the costly operation, which is entailed.

Q. If that cargo is taken into the warehouse by the Port of Stockton to relieve congestion on the transit shed, is there any charge then made by the Port of Stockton to the receiver of that cargo for, let us say, unpling it, or for delivering it?

A. No sir.

Q. The total charge of 40 cents per ton takes care of the whole operation?

A. Yes. And, of course, that includes the responsibility for checking it out—checking it when it goes out.

Q. Taking this situation with respect to the leasing of your warehouses, is the rental charge which is made by the Port of Stockton a rental charge which is determined by the space which is consumed, or is it determined in any respect by the commodity which may be used to occupy that space?

A. I would say by the space which is used. In other words, we have an investment there and we feel that there should be a return earned on that investment; in other words, amortization on bonds, and so forth.

• • • • •

[fols. 690-700]

#### PROCEEDINGS

Examiner Bashani: Are you ready?

Mr. Scoll: Colonel Allin, please?

B. C. ALLIN was thereupon called as a witness for the Commission and, having been first duly sworn, testified further as follows:

• • • • •

[fols. 701-712] Cross-examination.

• • • • •



[fol. 713] By Mr. Geary:

Q. Reverting to the canned goods again, outbound, how many stories are there to these warehouses that you lease?

A. Single story.

Q. Single story?

A. Yes.

Q. Have you ever observed a situation where, during the season when one of these warehouses was under lease, it was not used to its maximum capacity by the lessee?

A. Oh, yes.

Q. Now, to what extent?

A. Well, I couldn't say. I just know that there have been cases where part of the space was idle.

Q. What proportion of the space have you observed to be idle and for what length of time during the season?

A. Oh, I really could not say. I think that fluctuates very highly.

Q. It would be idle toward the end of the season rather than toward the middle of the season?

A. I would think so.

Q. But during the middle of the season it is used to its maximum capacity?

A. I would say reasonably so.

Q. Is the scale of wages which are paid to your warehouse employees the same as the scale of wages paid to [fol. 714] your dock employees?

A. You say our warehouse employees?

Q. Yes.

Q. Just whom do you mean by our warehouse employees?

Q. Well, the men, for instance, who pile or unpile merchandise in the warehouse?

A. If they are cannery employees, I wouldn't know what the scale is, off hand.

Q. If they are Port of Stockton employees?

A. Port of Stockton employees? They get the regular scale that applies all around San Francisco Bay.

Q. That is the scale of wages for stevedores or the scale of wages for warehouse employees?

A. I take it back. I don't mean all around San Francisco Bay; I believe locally there is a different scale at Stockton among the warehouse employees from what it may be here.

Q. Is that scale of wages fixed under any agreement with any association?

A. It is fixed so far as private operators are concerned, but the Port of Stockton does not make agreements with labor.

Q. And does the Port of Stockton accept that labor scale in the payment of wages to its employees in the warehouse?

A. The Port of Stockton has a scale which takes into consideration what is paid locally, and I cannot say that it had definitely accepted the local scale.

[fols. 715-727] Q. Does it pay more or less, Colonel Allin?

A. I would say it pays about the same.

Q. About the same?

A. Yes. In other words, my understanding is that the warehouse scale has different grades according to the duties of the men; in other words, we have mill feed plants in Stockton and the various men have different scales of wages. I think our men are paid comparably about the same as the same grade of private warehouse workers.

. . . . .

[fol. 728] Recross-examination.

By Mr. Vaughan:

Q. Colonel Allin, when you said that the Port of Stockton did not issue any warehouse receipts, did you have reference to property that was being stored in these so-called private warehouses?

A. I believe that question was on those leased areas, yes.

Q. Yes. Now, are warehouse receipts—is any kind of a receipt issued by the Port of Stockton in instances where [fol. 729] property is stored under the wharf demurrage rates?

A. Yes, sir, it is.

Q. And to your knowledge, are those receipts ever used as collateral for bank loans?

A. I believe they are.

Q. You testified Friday that in your opinion the wharf demurrage rates were not compensatory because of the fact that the property under wharf demurrage so congested the docks that it was necessary for you to skirt around them and that cost of operation was expensive to the Port, and you believed that for that reason they were not compensatory, is that true?

A. I think that is the theory on which they should be based.

Q. Have you ever made a study to determine whether or not the revenue received under wharf demurrage rates is sufficient to cover, first, the amount of labor required to handle and pile goods on wharf demurrage, and, second, to compensate the Port of Stockton for the space required to store those goods on wharf demurrage rates on a pro rata space basis?

A. I have made a rough estimate on the cost of the wharf structure, and it is my opinion that the present wharf demurrage rate is compensatory purely on a basis of the area of the building that it occupies, but that does not take into consideration the factor of increased operating costs which storage in the transit area involves, and that is a factor which is very difficult to determine.

[fol. 730] Q. Well, do you believe, taking into account the labor required, that the revenue received under wharf demurrage rates covers your costs?

A. Well, I don't know what you mean by the labor required.

Q. For piling and handling and checking and any other labor performed in connection with wharf demurrage?

A. Of course, the checking—there is no additional checking unless the freight is moved, but I do not think the present wharf demurrage rates are compensatory unless the wharf is idle and wouldn't be used for anything else anyway; and that, of course, is not a normal operation for a wharf. A wharf should be used for free flowing merchandise.

Q. Are you referring in your answer to outbound goods or merchandise inbound?

A. I am referring entirely to outbound because that is the major portion of our business.

Mr. Vaughan: Thank you.

By Mr. Graham:

Q. Colonel, if the wharf demurrage rates were raised and in fact became a penalty rate, which you advocate, is it not a fact that you would have to establish a new set of rates for what I will call your free storage of goods which you have not now got, or would you leave them at the present so-called wharf demurrage rates?

A. I think—I don't know that I understand your question, Mr. Graham.

Q. As I understand you, you advocate that demurrage rates should be on a penalty basis?

A. Yes.

Q. That would require them to be higher than they now are?

A. Yes, sir.

Q. Now, if that were a fact, would you continue to store your goods in the unleased warehouses on the wharf demurrage at this high penalty rate?

A. I imagine we would, unless it were prohibitive, in which case we might have to consider adopting some reasonable storage which would be separate again from any other system of charges that we now have.

Q. I think on Friday you testified that recently you had changed your tariff to provide for a waiver of free time, or an extension of free time, where a vessel was delayed? When was that done, do you know?

A. Excuse me; we didn't change our tariff.

Q. I guess it was my misunderstanding; that is item 370?

A. The tariff states that the Port may grant an extension of free time equivalent to the delay of a water carrier due to weather, accidents, breakdowns, or other emergencies, in those instances where shipments have arrived at the port consigned to a vessel so delayed. What I said was that we were using this wording "or other emergency" now to [fol. 732] include the mere being late of a vessel, which we understand to be the prevailing policy in San Francisco Bay.

Q. So what the rule really comes down to is a rule that if the vessel is late, the Port of Stockton may grant an extension?

A. Yes, sir. I think it should be made definite that they will, with some limit to it, say, five days, for example.

Q. In other words, the tariff now says you may optionally, and you believe that it should be obligatory but with a fixed time of extension?

A. Yes, sir.

Q. How long has this rule been in effect, do you know, that you might grant an extension?

A. Oh, for a very considerable length of time. I don't recall when it was put in; a number of years, probably.

Q. Prior to that rule, and when you didn't have any option to grant an extension, did you charge demurrage

rates to either the cargo or the shipment when the ship was late?

A. We did.

Q. Whom did you charge it to, do you know?

A. We charged it to the shipper.

Q. The cargo?

A. Yes, sir.

Mr. Graham: I believe that is all.

Mr. Vaughan: May I ask another question?

[fols. 733-739] By Mr. Vaughan:

Q. Colonel Allin, do I understand that the wharf demurrage rates assessed by the Port of Stockton are lower than the warehouse rates currently charged by public warehouses in the Port District?

A. I believe they are lower.

Q. And are the wharf demurrage rates lower because of the desire of the Port of Stockton to compete with those public warehousemen in Stockton, or because of the fact that the wharf demurrage rates of the San Francisco Bay Terminals are on the same level as the wharf demurrage rates at the Port of Stockton?

A. It is entirely the competition of the terminals in the San Francisco Bay.

[fol. 740] B. C. ALLIN thereupon resumed *and* stand and having been previously duly sworn, testified further as follows:

Direct examination.

By Mr. Differling:

Q. Colonel Allin, do I understand correctly that this Public Warehouse Tariff which you publish has the charges for your wharf demurrage rates?

A. We use the wharf demurrage schedule.

Q. What is the reason for publishing two separate tariffs, then, where the charges are identical?

A. No, I say we use the wharf demurrage tariff for goods which are on wharf demurrage either in the warehouses or on the wharf. We have no other goods in storage.

Q. Well, do you publish any other tariff or do you have

in your files any scale for charges other than those shown in your wharf demurrage tariff, which is part of the record here, exhibit No. 69?

A. That is the only schedule of charges which we have at the present time.

Q. You made reference to the fact that you knew what your floor space costs were for wharf demurrage; would you mind stating what that cost is per square foot?

Mr. Townsend: Mr. Examiner, I object to the question as incompetent, irrelevant, and immaterial. I think that the matter of costs of wharf demurrage space or anything relating to the costs has no bearing in this proceeding be- [fol. 741] cause this Commission has no jurisdiction over the level of the wharf demurrage charges.

Examiner Basham: Objection overruled.

A. Mr. Differding, in answering your question it will be necessary for me to read this into the record, if it is satisfactory (indicating).

Mr. Scoll: May I see it?

By Mr. Differding:

Q. Can you just tell me what that cost is per square foot?

A. Yes.

Q. In order to answer the previous question, you must have had that figure, and that is all I desire.

A. \$4.87 per square foot.

Mr. Graham: What is that, the warehouse space?

The Witness: Transit shed floor area.

I submit, Mr. Examiner, that that is not entirely intelligible without being explained.

Examiner Basham: You may explain the answer.

By Mr. Differding:

Q. It is \$4.87 per square foot and that is on a yearly basis?

A. It is on a square foot basis.

Mr. Townsend: Colonel Allin, the Examiner said you could go ahead and explain it.

By Mr. Differding:

[fol. 742] Q. Will you go ahead and explain the answer?

A. In order to arrive at the cost of the structure, we took four wharves, five, six, seven, and eight, and we found



that the cost of construction, plus the cost of dredging, plus the cost of the land, gave those facilities a cost of \$742,792. Those are covered wharves, and it is my feeling that the wharf is no good without the transit shed, and the transit shed is no good without the wharf, and that the two cannot be separated when it comes to cost. Therefore, they must be lumped, and I have lumped the entire cost of those facilities. I have then taken the total area of the transit shed and removed from it the area for central driveway, ramps, elevators, and so forth, and arrived at a total square foot area left available of 152,518 square feet which, divided into the previous cost, gives a cost per square foot of the facility of \$4.87. That has nothing to do with any period of time. That is the cost of the structure.

Q. Now, do you agree that goods on wharf demurrage require actually more space than that covered by the goods themselves, in order that they may be handled?

A. I do feel that an estimate of 60 per cent of this available space is fair to consider as the space which would reasonably be used for the actual storage of goods, the piling of the goods.

[fol. 743] Q. And that would mean that your figure would have to be extended by that percentage?

A. To the extent of \$8.10 per square foot.

Q. \$8.10?

A. Yes.

Q. And your theory of developing costs for wharf demurrage, then, would hold true in your other charges, would it not? And if you are going to use the blanket overall cost of dredging, aprons, and fenders, as well as structures, for arriving at your wharf demurrage cost, you would similarly use that breakdown for your other services?

A. I don't know what other services you mean.

Q. You have dockage and you have a receiving and a delivery charge, which is comparable to what they call a service charge down here, and you also have tolls.

A. No, I don't think—I see what you mean. Yes, I would lump those figures all together.

Q. Yes?

A. I don't believe in too highly analytically separating those factors.

Q. Do you believe that the users of your different services are compensating you for them?

A. I do.

Q. And do you believe that the closer that those costs for each service can be arrived at, that in turn the charges [fol. 744] should be predicated upon those divisions of costs?

A. Yes, sir.

Q. All right. Now, you stated that your present wharf demurrage rates are not on a penalty basis because of the competition on San Francisco Bay, as I understand it?

A. Yes.

Q. Now, assuming that the competition be eliminated, what, based upon your judgment and experience in the terminal business, would you prescribe as a penalty wharf demurrage rate to effectuate the purposes that you hope to obtain?

A. Oh, I think that that should be increased probably three times.

Q. In other words, on merchandise N. O. S., your storage rate of 2 cents per ton per day you would increase to 6 cents per ton per day?

A. Well, say, five cents.

Q. And you would leave it on a per day basis?

A. Yes, but there would be a certain ceiling. We have never considered the detail of the schedule as carried out for any length of time. I think that would be a little too burdensome if there were not some—

Q. That comes to the second point that you apparently had in mind. Then, after you have established this penalty wharf demurrage rate of 5 cents per ton per day on merchandise N. O. S., what would be your judgment as to a [fols. 745-758] proper set-up of a storage basis of charges for a period of time, a month, two months, six months, or a full year?

A. I haven't really given, Mr. Differding, any consideration to that, because I don't feel that storage should be encouraged on a wharf unless the wharf is otherwise going to be idle. In other words, I feel that a wharf should be kept for the free flow of transit business.

Q. Yes, I appreciate that, Colonel, but you also mentioned in answer to counsel's question across the table that there should be prepared a second basis of charges to provide a service to those persons who desired storage. Now, what is your opinion on that?

A. That was in the warehouse. I said possibly we might have to devise such a schedule of charges, but we haven't done that to date.

[fol. 759] Q. On item 385 you have various bases of charges, in other words, you have the per ton per day basis, you have a monthly basis, and you have, like the grain N. O. S., the ten day to thirty day basis. Do you have any particular preference for one basis or another in assessing your wharf demurrage charges?

A. Yes, personally I would like the simplest possible basis.

Q. And what do you consider the simplest possible basis? What is that?

A. I say just one set charge per ton per day, but whether that could be achieved as the ultimate I doubt, because the various trades and commodities have sometimes different conditions that could not be overcome.

Q. It is true, however, Colonel Allin, that about 98 per cent of all the specific commodity rates listed here are on a per ton per day basis?

A. That is true.

[fol. 760] Q. So you are satisfied with the basis used at the present time?

A. I don't know, Mr. Differding. I think this basis has just grown like Topsy over a period of a good many years, and possibly some came to be used without rhyme or reason and they have existed for years and nobody disturbed them. I question whether, if you analyzed them in detail, you could find the complete justification for the differentiation.

Q. You say you could or could not?

A. I doubt if you could.

Q. In other words, then, you would agree that these rates have been more or less plucked out of the air and put in the tariff and there they are?

A. That is usually the way they are.

Q. Colonel Allin, have you made any study as to the matter of overhead costs and clerking costs that are properly to be allocated against wharf demurrage maintenance, similar to your floor space costs?

A. Yes. I will have to explain that, however, in the same manner that I explained the previous figure.

Q. All right, will you let me have the figure first and then explain it?

A. It is not quite as simple as that, Mr. Differding. Taking my revenues for certain sheds of \$115,500, and expense, overhead, and depreciation, of \$47,500, I find that those [fols. 761-800] expenses equal about 41 per cent of the reve-

nues, and if, for example, I were to have to earn a return of 5 per cent on the \$8.10 per square foot cost of my shed, that would mean about 40½ cents per year, and if I added 41 per cent to that in order to earn that 5 per cent, I would get an earning of 57.1 cents per year that I would have to earn per square foot to get the 5 per cent return. If we just use round figures of 60 cents, that would equal 5 cents per square foot per month. On canned goods, if they are stored 270 pounds to the square foot, or 7.4 square feet to the ton that would equal 37 cents per ton per month, or roughly 1¼ cents per ton per day, which is our present demurrage rate.

Q. And that space of 7.4 square feet is without high piling, is it not?

A. Yes, sir.

Q. Have you found it necessary in the efficient operation of your terminals to perform much high piling and breaking down of cargoes in order to conserve space for goods that are on the wharf demurrage?

A. Very seldom. We have, however, encountered that a few times in a congested period.

Q. And what has been the disposition of the cost? Have you absorbed that in overhead expense?

A. In those cases we have absorbed it.

[fol. 801] Redirect examination.

By Mr. Differding:

Q. I have a couple more questions, Colonel. In your reference to meeting competition by extending your free time to include the delays of vessels in the ordinary course of business, you mentioned meeting San Francisco Bay competition. Did you include specifically any San Francisco terminal?

A. Not necessarily, no, sir. It was just generally competitive conditions around the Bay.

[fol. 802] Q. You know this, do you not, that the tariff of the Board of State Harbor Commissioners in San Francisco requires assessment of wharf demurrage on the same basis whenever the free time is exceeded by a vessel?

A. It might read that way, yes.

Q. Isn't that your understanding?

A. That it reads that way? Yes, sir.

Q. Do you have any understanding that those charges are not assessed and collected?

A. Yes, sir.

Q. What is the basis of that?

A. It is largely hearsay.

Q. Have you ever made any effort with these other terminal operators in San Francisco Bay to get together on this matter of free time?

A. No, we have not got together on it. I do feel that it will be a matter of study.

Q. Now, your allowance of ten days free time on inbound and outbound commodities in all trades, was that made to meet the East Bay Competition?

A. Yes, sir.

Q. And not San Francisco?

A. East Bay.

Q. Are your non-free time periods allowed by the East Bay Terminals and yourself a proper measure of the free time, or is that in effect at the San Francisco Bay?

[fol. 803-824] A. I would say that ours is better.

Q. And why is your basis any different from then San Francisco Terminals?

A. Well, we don't have a lot of less than carload freight. Ours is very largely large lots, and it seems to me that ten days free time is desirable.

Q. That is all you have to offer on that?

A. Yes.

Mr. Differding: I think that is all I have, Colonel Allin.

. . . . .

[fol. 825] M. D. McCARL was thereupon recalled as a witness for the Commission, and, having been previously duly sworn, testified further as follows:

Direct examination.

By Mr. Scoll:

Q. Mr. McCarl, you are familiar, are you not, with the final report of the California Railroad Commission in case 4090, which has been introduced in this record as exhibit 61?

A. I am. I read it some time ago.

[fol. 826] Q. I would like to read to you a statement from Chapter 8 and ask you a question about it. On page 96 of



this report, following the statement of the formula whereby the area of the terminal chargeable to demurrage is computed, appears this statement:

"Thus, out of every 100 square feet chargeable to demurrage, 30 square feet of aisles and 10.5 square feet of waste areas are non-revenue producing, leaving 59.5 square feet as revenue producing."

Do you agree with that conclusion, that approximately 59.5 square feet of terminal space chargeable to demurrage is actually revenue producing?

Mr. Jones: Just a moment, please. Mr. Examiner, I am objecting again on the matter of jurisdiction. The Board of Port Commissioners feels that the Maritime Commission has no jurisdiction over the level of the rates of warehouse storage, and hence I am going to instruct Mr. McCarl or any other witness from the Port Commission to refuse to answer any questions based upon the level of rates or any formula or basis for fixing them. Any question of practices or what rates are applied, or any such thing, is perfectly all right, but in so far as the basis is concerned—in other words, frankly, I am inviting, with all due respect to the Commission, content proceedings, in order that we may determine once and for all whether or not the Board is subject to the Maritime Commission on this one point. So, con-[fol. 827] sequently, I instruct Mr. McCarl to refuse to answer that question.

Mr. Scoll: May we go off the record a minute, Mr. Examiner?

Examiner Basham: Off the record.

(Discussion off the record.)

Examiner Basham: On the record. Do you desire to ask the witness any further questions about port demurrage?

Mr. Scoll: We will see how far we can get.

By Mr. Scoll:

Q. Are your rates and practices regulated by the California Railroad Commission?

A. No, sir.

Q. Have your operating costs increased since 1936?

Mr. Jones: I instruct him to refuse to answer—



By Mr. Scoll:

Q. How is the competition among the terminals—

Examiner Basham: Let me say this; I think the witness should answer. Go ahead.

Mr. Jones: I will instruct you, Mr. McCarl, not to.

By Mr. Scoll:

Q. How is competition—in your opinion, how has competition among the terminals in San Francisco Bay Area affected the wharf demurrage rate?

[fol. 828] A. I think it has been very largely responsible for the *the* naming of the various rates for the Terminal Warehouse.

Q. What do you mean by that?

A. I think in the past it has been based almost entirely on the matter of competition.

Q. And for that reason will you say that it was unreasonably low?

Mr. Jones: I instruct you to refuse to answer.

Examiner Basham: The witness should answer.

Mr. Jones: My instruction stands.

By Mr. Scoll:

Q. You heard Mr. Allin testify, I think, concerning what he thought a reasonable and proper wharf demurrage was, did you not?

A. Yes, I did.

Q. I believe he stated that but for various competitor factors that have determined the rate, that a proper rate would be in the neighborhood of 5 cents per day.

Mr. Jones: The same instruction.

Mr. Scoll: Let me finish my question, please.

By Mr. Scoll:

Q. Do you agree with that statement?

Mr. Jones: The same instruction.

Examiner Basham: Let me make a general statement, that in the Examiner's opinion the questions along this line [fol. 829] should be answered by the witness.

Mr. Jones: Mr. Examiner, I think that these go to the basis of the rate.

Examiner Basham: That is all right, I don't think we need to argue it. I just want the record to show that in my opinion they should be answered, and I understand you will instruct him not to answer when you feel he should not.

By Mr. Scoll:

Q. Now, this competition which has affected the level of rates, about which you are permitted to speak, has also in some manner determined the application of free time and enforcement of the free time provisions published by the tariffs?

A. I think the free time has been determined in approximately the same way, a matter of competition.

Q. Do you know whether it has been the practice among the terminals in the San Francisco Bay Region to extend free time beyond the tariff provisions in order to favor shippers?

A. I don't know definitely of any such instances. We have heard that certain parties have, either knowingly or otherwise, not always assessed demurrage charges which might have accrued.

Q. Does the Port of Oakland operate public warehouse facilities on the terminal?

A. Not warehouse facilities; we have one facility known as Terminal Building C in the rear of the transit sheds of the Outer Harbor Terminal.

[fol. 830] Q. And is that Terminal Building C reserved for warehouse storage?

A. It is used for the handling of overflow cargo, or cargo that we believe will remain in storage for a considerable period of time.

Q. How is it located with respect to the transit shed which it adjoins?

A. It is immediately in the rear of the transit sheds and across the street, probably 200 feet distant from the transit shed at the nearest point.

Q. What kind of a structure is it, a one or two story?

A. Two story concrete.

Q. And used entirely for storage, is it?

A. For cargo remaining longer than the free time period. Outside of pineapple, which comes into the terminal by water, it is used entirely for outbound water moving cargo.

Q. Let me see if I understand you. You say it is used entirely for outbound cargo?

A. Yes, outbound water movement.

Q. And no inbound movement?

A. Not with the exception of pineapple.

Q. What rates apply to goods that are stored in terminal building C?

A. Either the rates that apply in the transit shed, or in a few cases, a square foot basis.

[fol. 831] Q. And the rates referred to in the transit shed are the wharf demurrage rates?

A. Yes, we call them storage rather than demurrage. We have a little different view of goods remaining in storage in the transit sheds, I believe, from the others.

Q. Will you explain that?

A. I think possibly the quickest way would be to read a short statement which was prepared by Mr. Hegardt, former Port Manager, and myself, and presented to the Railroad Commission.

Q. Just a moment. Would you mind if we defer the reading of the statement until later, and you just follow me on the questions for the time being, because you may want to read something in there that your attorney would object to.

Mr. Jones: That is what I was afraid of.

By Mr. Scoll:

Q. Let me rephrase my question: You apply a wharf demurrage rate in the transit shed, do you not?

A. I say, we call it wharf storage rather than demurrage.

Q. In the tariff it is called wharf storage?

A. Yes.

Q. Now, is that the only storage rate that applies in the transit sheds?

A. Yes.

Q. Now you have also, do you, a warehouse rate on a square foot basis?

[fol. 832] A. Yes, for limited use, I would say.

Q. Now, is that rate set forth in your terminal tariff?

A. It is.

Q. Do you have any other storage rates that apply either in the transit sheds or terminal Building C, or any other areas that are used or useful for storing property?

A. None whatever.

Q. So that you have only the two rates?

A. That is right.

Q. Now, does it happen that cargo or goods which are stored in Terminal Building C are sometimes stored there under the wharf storage rate?

A. Yes.

Q. Is that usual?

A. I would say in most cases. However, so far as volume is concerned, I think the greater volume would be on the square foot basis.

Q. Do you issue receipts on the goods that are stored on the square foot basis?

A. No.

Q. Do you publish a warehouse tariff?

A. No.

Q. Do you permit on the transit spaces of the pier sheds, any storage other than what you refer to as wharf storage, and which we have been referring to hitherto as wharf demurrage?

[fol. 833] A. No, we do not.

Q. Do you make that a strict rule?

A. Either transit cargo or storage cargo.

Q. Do you have any cargo stored on any of the transit space on a square foot basis?

A. No, we do not.

Q. Now, do you have any storage accounts or any other accounts on which to store goods at some other rate than the square foot rate or the wharf storage rate?

A. We have a few leases. Those are not in the transit sheds, however.

Q. What buildings do you lease?

A. Terminal Buildings A and B at the Outer Harbor Terminal, and then there is a facility out in East Oakland that is leased, formerly occupied by the Body Canning Company.

Q. How do you designate that building, that leased one, that was formerly leased to Body Canning Company? Is that East Oakland?

A. That is East Oakland, approximately 19th Avenue and Livingston Streets.

Q. So that the only three buildings or areas which you lease are Terminal Buildings A and B, and the 19th Avenue Building, is that correct?

A. There are some other leases. There is one to the Western Vegetable Oil in the Outer Harbor area, and, of course, we have one to Albers Brothers Milling.

[fol. 834] Examiner Basham: Off the record.

(There was a discussion off the record.)

By Mr. Scoll:

Q. In view of the fact that there is a list of these leases, perhaps we can go on to another matter now and come back to that later. Do any of these lessees, to your knowledge, operate the premises as public utility wharfingers or warehousemen?

A. We have one that I intended to mention when we had the break there, the one in Terminal Building C to the Oakland Bean Cleaning Company, I believe they call themselves, who are a public utility in so far as the cleaning and storing of beans is concerned.

Q. And do you know what storage rates apply to their business?

A. I understand they are the same rates that apply at the so-called up-town warehouses.

Q. Do you have any agreement or understanding with them with respect to what the rates shall be?

A. Their rates are on file with the California Railroad Commission. We have no understanding otherwise.

Q. So that you do not exercise any control over those rates through the terms of the lease that you have with them?

A. We don't have a lease. It is just a space rental arrangement under the rates provided for in the tariff. I referred to it as a lease, but it is really a space rental arrangement, a month to month basis.

Q. How is the rental paid, on a square foot basis?

A. A square foot basis, yes.

Mr. Scoll: Those are all the questions I have for the moment.

Mr. Differding: I have a few questions, Mr. Examiner.

By Mr. Differding:

Q. Mr. McCarl, I show you exhibit 71 in this proceeding, which is a copy of your present tariff, and show you First Revised Page 2, naming rates, charges, rules and regula-

tions, under which appears in parentheses "(Subject to change without notice)". What is your interpretation of those particular words in the application of that tariff?

A. The rates are established by ordinance, and if, for any reason a party does not receive a copy of the tariff or a correction to the tariff, nevertheless the rates apply and they are subjected to those rates, any users of the facility.

Q. It is a fact, is it not, that there are hundreds of users of your facility who do not have a copy of the tariff?

A. That is right. We do not guarantee to give everybody a copy of the tariff but they are subject to the tariff even [fol. 836] though they do not receive a copy of it or a copy of the corrections.

Q. Taking out at random Second Revised Page 24 A of the same tariff, down at the bottom the words appear as follows: "Adopted March 8, 1937. Effective March 8, 1937." And there are numerous other pages showing the adoption and the effective date to be the same in the tariff. The word "adopted" refers to the adoption of the tariff change by resolution of the Board of Harbor Commissioners of the City of Oakland?

A. By ordinance, rather than as a resolution.

Q. By ordinance? And what effort is made, if any, to notify the users of your facilities, be they the shipping public or the vessel operators, as to these proposed changes under such conditions where the change and the effective date are concurrent?

A. We endeavor to give the shipping public the same amount of notice as the private operators. The rates are in practically all cases agreed to with the private terminal operators, and due to the fact that they have to file their tariffs with the California Service Commission we wait until the effective date is determined, and then we present to the Commission in ordinance form corrections which will put the Port of Oakland on a parity with the private terminal operators. It requires two readings of the ordinance at the Board meeting before adoption. Occasionally, in order to make our effective date the same as the private [fol. 837] terminal operators, an item that may be more or less inconsequential, or might be a reduction rather than an increase, might be made effective the first reading. That is most unusual, but then the effective date will be the same.



In most cases the effective date is in advance of the adoption date.

Q. You have had no instances where you have adopted tariff changes and had a retroactive date on those changes?

A. I know of none.

Q. And you are also aware of the requirements of the United States Maritime Commission—rather, the old United States Shipping Board, in Docket 126, requiring the intercoastal lines to publish these various terminal charges in their respective tariffs?

A. I am.

Q. And where changes are made, have you always advised the Intercoastal carriers in sufficient time for them to meet the statutory requirements of tariff publication?

A. We have never had any trouble along that line. The only time the question was raised was recently in connection with an inquiry in the toll charge, and we took that up with the representatives of the intercoastal operators, and I believe we satisfied them in so far as the effective date was concerned. The private operators and ourselves had exactly the same problem.

[fol. 838] Q. Now, I assume that you have some member of the shipping public that uses your facilities exclusively, and he may be at some distant point; how is he advised of these changes that are adopted and made effective on the same day?

A. We have no exclusive users of our facilities, not being fortunate enough to have exclusive users.

Q. Are you sure that you are right in that respect?

A. Oh, yes, absolutely. However, we have never had any question raised, any objection raised, as to the effective date of a change in the tariff. I don't know of a single instance where there has been an objection.

Q. Is there any reason why you cannot publish your tariff changes a reasonable time, say 15 or 30 days in advance of their effective date, as your private competitors do?

A. Quite frequently the private operators request short notice applications of the railroad Commission and it is granted and we make our effective dates at the same time. Our Board meets on Monday, and in order to arrange the effective date very often it works out in a way of having to wait until we determine the effective date that the private operators' change will become effective, which makes rather short notice sometimes in so far as publication is concerned.

but that only applies in cases of reductions and we have never had any objection from the shippers.

Q. In the case of reductions on short notice I am sure you [fol. 839] ordinarily would have no objection, but let us take the usual changes, which are on 30 days notice by the private operators. The short notice requires special justification before the Railroad Commission and is not the usual thing that is done in making these tariff changes, is that so?

A. I think our time of notice coincides very closely with the time allowed by the private terminal operators filing their tariffs with the railroad commission.

Q. Your exhibit No. 71 does not indicate that, and I will again ask the question: Is it not a fact that there is nothing to prevent you from giving at least 15 or 30 days notice as required by the—thirty days notice, as required ordinarily of the private operators?

A. Nothing to prevent it, but sometimes in making these rates we do not wish to allow that much notice; usually it is in the public interest to have a shorter period of notice.

Q. Does that apply to increases in rates as well as decreases?

A. I don't know of any increases outside of what I mentioned, on which I think we gave ample notice.

Q. How much was that?

A. It was adopted by ordinance at the second reading on November 6, 1939, and was effective December 1, 1939.

Q. That is 24 days?

A. That is correct.

Q. Now, I show you Fourth Revised Page No. 7 of Exhibit No. 71, item 35-D, in which the exception is made as to [fol. 840] vessels delayed due to stress of weather, and so forth, excluding the other emergencies. You have heard the testimony of Colonel Allin in this proceeding?

A. I did.

Q. What has been the practice of the Port of Oakland as to waiving those charges where the vessel is delayed in handling its ordinary business?

A. I don't know as I would say that we waive the charges, but we interpret our tariff so as to permit an extension of the free time period, the same as the private terminal operators do in the East Bay.

Q. And while that item, which is exception No. 2, states that the Port Manager may extend the free time to such number of days as in his judgment is warranted and

equitable in each individual case, the fact is that in all instances he has extended the free time to cover such delays, isn't that true?

A. Where the vessels are delayed through no fault of the shippers and the shipper is not at fault in the delay of the vessel, the free time is extended in all cases. In other words, I might explain that we issue a sailing schedule setting for-- the date of sailing for various vessels, and inasmuch as we advise shippers in that manner as to the sailing dates in respect to vessels we feel that it is an obligation of the Port to protect them against any additional charges when vessels are delayed.

[fol. 841] Q. So much for the shippers. Now, what is your understanding, if the Port Manager did not exercise his judgment in extending that free time and the charge was to be collected, that is, for that amount of cargo which was delayed pending the delayed arrival of the vessel, would you assess it against the ship?

A. I think we would have a hard time collecting it against the ship unless it were shut-out cargo. We have never had any occasion to assess it against the ship.

Q. You have never had any shut-out cargo?

A. No.

Q. Now, there is also an extension of the free time period on cargo moving under through rates from the Hawaiian Islands to intercoastal or foreign destinations, being exception No. 1. Would you state the reasons for that extension of the free time in that instance?

A. We put that exception in our tariff to meet a competitive situation. However, I believe the wording of the exception was arrived at pretty much through uniform action between the various terminal operators.

Q. What is the competition that you refer to?

A. It is my recollection that the Encinal Terminals--it was more of a problem with them some time ago than it was with ourselves.

[fol. 842] Q. Are we to understand then that they initiated it and you followed along, is that it?

A. That is my recollection.

Q. Mr. McCarl, when did the Board of Port Commissioners, as such, start in the active operation of the water front in Oakland Harbor?

A. About 1927, I believe.

Q. And what was the basis of wharf demurrage charges with your competitive terminals on the east side of the Bay at that time?

A. It is my recollection and my understanding that when we first commenced to discuss those matters with the private terminal operators the conditions in so far as assessing warehouse demurrage and storage charges were concerned, were very chaotic. There were no tariffs published by the private terminal operators, and I don't know as they even had rate sheets.

Q. And the fact was that that was prior to any requirement of the California Railroad Commission that terminal tariffs be filed, was it not?

A. That is correct.

Q. And how did the Port of Oakland try to meet that competition, that is, the basis of charge on a per day basis or on a period basis of some character; not specific rates, but what was the basis that you applied to your wharf demurrage cargo at that time?

A. The tariff in effect prior to the publication of this Port of Oakland Tariff No. 1 was a tariff which was published by the Department of Public Works, and the rate named for wharf demurrage or wharf storage, I forgot which it was called at that time, was 12½ cents per ton per week or fraction. Having had considerable experience in the assessment and collection of storage charges, and also in view of the competitive rates about the Bay district, we decided that a daily basis was preferable to a period basis. In my experience in the Pacific Northwest I know that when we used to assess charges on a period basis we had a great many complaints and a great deal of correspondence requesting the waiving of the period for one or two or three or four days, they claiming that we were not justified in assessing a charge for a long period of time where only a small portion of the time was actually used, and there was a tendency to waive the charges for those few days. That applied to the steamship operated terminals in the northwest and private terminals, as well as public terminals.

Q. Do you know how this 12½ cents per ton for seven days was arrived at by your predecessors, this Board of Public Works?

A. That was the rate in effect in San Francisco and I believe they simply published the same rate.

[fol. 844] Q. That is the so-called bulkhead demurrage basis on the assigned piers at San Francisco today, is it not?

A. That is correct. I know, however, that when I was first employed by the Port of Oakland that the operators of the Lawrence Terminal, who were operating on an arrangement from the City, used to make requests continually as to whether or not the storage charge could not be waived in order to get certain blocks of tonnage and meet the rates quoted by their competitors.

Q. Who were their competitors?

A. Well, there was the Entinal Terminals, Howard Terminal, and at that time Parr Terminal in Oakland. Those were the principal ones.

Q. Now, when the Board of Port Commissioners of the City of Oakland inherited this water front at Oakland from the Department of Public Works and this 12½ cents per ton per seven days demurrage charge, how soon thereafter was it that the present daily basis was put into effect?

A. When we first published the tariff No. 1. I think the date—one of the original pages shows the effective date.

Q. I am sorry that I cannot supply that. I don't have the original pages of this tariff.

A. Aren't there any original pages still left there?

Mr. Graham: Page 10 is one, adopted June 17, 1929, of [fol. 845] effective June 20, 1929.

The Witness: I think that is when the daily basis was first started.

By Mr. Differding:

Q. Do I understand correctly that the 12½ cents per ton for seven days was in effect for substantially two years before you switched over to the per ton, per day basis?

A. The Port of Oakland was constructing facilities and I don't think we did a great deal of operating much before 1929, so that we did not have occasion to assess storage charges prior to that. However, we did work out with the private terminal operators through conference in the Port of Oakland office some schedules for the various terminal services, including that of wharf storage.

Q. What, if you know, was the basis of your competition on the East side of the bay for wharf demurrage charges up to June of 1929?



A. Well, as I was able to determine through the requests that came to me from the operator of the Lawrence Terminal, I would say that there wasn't any definite basis.

Q. Well, do you mean as to specific charges of special commodities, or the whole rate structure applicable to wharf demurrage cargo?

A. I think they were probably endeavoring to follow this 12½ cents per ton per week, but I think I am safe in saying that there were a great many exceptions, so far as the assessment of that rate was concerned.

Q. And it is true, Mr. McCarl, is it not, that pursuant to decision No. 20531 in California Railroad Commission case No. 2501, the private terminal operators in San Francisco Bay and other places in California were required to file wharfinger tariffs with the railroad commission? You are aware of that?

A. Yes, that is correct.

Q. And during the period after that decision was rendered and the publication of the various private terminal operators tariffs in San Francisco Bay, there were numerous conferences between you and these private terminal operators, particularly on the East side of the Bay, as to the basis of charges to be filed, is that not true?

A. That is right.

Q. And out of those discussions there was filed this so-called daily basis of wharf demurrage charges?

A. That is correct. I might state that it is my recollection that we started it out with 2 cents per ton per day on all commodities, and from that starting point, in endeavoring to meet the competition principally, I think, with State Terminal in San Francisco, we developed some rates lower than the 2 cents per ton per day which applied particularly to canned goods and dried fruits.

Q. Did you also take into consideration the so-called penalty and bulkhead demurrage rates then in effect on the San Francisco assigned piers?

A. We took that into consideration. However, our competition was more with the State Terminal at that time, and also we heard many rumors that the so-called penalty rates in San Francisco were not always assessed. I don't say that they were intentionally overlooked, but through their method of operation I think there was a good possibility of a good many of them being overlooked.



Q. Did you ever sit down with the members of the State Board of Harbor Commissioners of San Francisco or any of their executive officers for a discussion of these charges?

A. We did with the representatives of the State Terminal, and later on Pier 45, the Golden Gate Terminal. The name of the operator, however, was changed from time to time.

Q. In arriving at this per ton per day basis in 1929, were there any objections raised by your East Bay competitors to that basis of charge?

A. The daily basis?

Q. Yes.

A. Those were worked out with the private terminal operators. I believe we were all pretty much in accord. However, I believe as time developed they have not been so much in favor of the daily basis as some of the rest of us have. I think that—I know I have heard expressions from [fol. 848] some of the other operators, such as Parr Terminal, the Port of Stockton, as well as ourselves, in favor of the daily basis versus the period basis.

Q. Am I safe in assuming, however, that in so far as the Port of Oakland is concerned, they at that time were in favor of the daily basis and are of the same opinion today?

A. We always had been of that opinion, that that basis was preferable to the period basis, although we have sat down and endeavored to work out with the private operators. About a year or two years ago, I believe, we had optional schedules worked out on the daily basis and also on the period basis under certain conditions whereby the period basis might be applied to long time storage and the daily basis to a shorter period of storage. However, I don't know myself just why those negotiations were not pursued further at that time.

Q. Are you still as strongly in favor of the daily basis of wharf storage accounts, and by that I mean those commodities which stay a week beyond the free time period or a month, two months, and in some instances a year or two or three years, according to some of the operators' records; do you feel as strongly as you did back in 1929 that the daily basis is the proper and non-discriminatory and non-prejudicial charge?

Mr. Graham: That is wharf storage that you are talking [fol. 849] about, Mr. Differding?

Mr. Differding: I am talking about this long time storage charge.

Mr. Graham: On the wharf?

Mr. Differding: Yes.

A: We still feel the same way. It has worked out very satisfactorily in our case with our type of operation and facilities, and we understand it is very satisfactory to the shippers. I haven't heard of a single objection to it on the part of shippers. It simply means that everybody pays for exactly the amount of time that the space is occupied. Whether it should be on a daily basis or a period basis I think is a matter of opinion. I think the matter of the goods remaining in storage in transit sheds is a whole lot different than the goods being placed in warehouses, and in that connection, either now or a little later on, I would like to read these few words along that line which I think would explain my thoughts on that matter.

I think that the question of storing goods in transit sheds versus putting them into a warehouse for storage is a good deal like the comparison between a hotel and a dwelling or apartment house, where a man goes into a hotel and he pays for the actual time that he occupies a room. In the case of goods being put into the transit shed, as a rule they are not put there for storage purposes. They don't [fol. 850] know whether they are going to move out within the free time, one day after, two days after, or whether it might be ten days or a year. That is a thing we do not usually know at the time the goods are placed in the transit shed. They are placed there in the case of inbound water movement at the place of rest by the stevedores and removed by truck operators from the place where they are deposited by stevedores without any service in the way of transferring or piling with the exception of pineapple, which we pile. Otherwise, I think we might say we never have occasion to pile goods or transfer them from the place where they are deposited by the stevedores in the case of inbound water movement or the deposit by truck operators in the case of outbound movement. When we unload cars we put the goods to the place of rest on the dock where they are eventually picked up by stevedores without any further service being performed.

I would like to just read this short statement either now or a little later.

By Mr. Differding:

Q. Before doing that, Mr. McCarl—you will have a chance to read that statement—you referred to the matter of a man using a hotel room. You also agree, do you not, that the man that is operating that hotel is entitled to sufficient compensation for the length of time the man occupies that hotel, do you not?

[fol. 851] A. Yes; we have always been agreeable to sitting down with the other operators and suggesting that some of the rates are too low and should be increased.

Mr. Vaughan: May I interrupt? In your answer you meant wharf demurrage rates?

The Witness: Yes, but we call it storage. Demurrage indicates that it may be a penalty charge and we don't look at it that way.

Mr. Vaughan: Mr. Differding, do you mind at that point?

Mr. Differding: No.

Mr. Vaughan: You include in that statement that you have been always willing to sit down and discuss the matter of a cooperative arrangement, not only a penalty wharf demurrage charge, but also a proper scale for warehousing as such?

The Witness: We are always glad to sit down and discuss those matters.

By Mr. Differding:

Q. Mr. McCarl, in sitting down with your competitors have you ever made or caused to be made any cost studies that you felt represented the fair and reasonable cost to the Board of Port Commissioners of Oakland in performing these various wharf demurrage services?

A. No, sir, we have not.

[fol. 852] Q. And is it also true in your case, as Colonel Allin mentioned, I believe, on Friday, that these charges have been more or less plucked out of thin air and set down in the tariff and there they are?

A. I think they have been arrived at through competition rather than plucking them from out of the air.

Q. But in those instances where the charges of all of the East Bay Terminals are on a substantially lower basis than the charges in effect at San Francisco, how do you arrive at those particular types of rates?

A. I wouldn't say the charges are lower.

Q. I beg your pardon.

A. I wouldn't say that the charges are lower in the East Bay than they are in San Francisco. I know that we have lost tonnage to San Francisco by reason of the low rates at the San Francisco terminals.

Q. Assuming for the moment that the rates of San Francisco are higher than those you have, and you enjoy rates lower than those which are in effect in San Francisco, what reasons do you offer to justify those instances?

Mr. Jones: I think I will have to instruct you to refuse to answer that question. I have departed from my policy and have allowed some liberality, but this I think goes back to that matter of the basis.

Mr. Differding: I have in mind not so much the actual [fol. 853] volume of the rate, Mr. Jones, as the varying rates on different commodities substantially similar in characteristics, which might well be discriminatory between different users of the facilities and possibly create prejudice.

Mr. Jones: If it is on the question of prejudice, I prefer not to urge my objection.

Mr. Differding: That is what it is.

Mr. Jones: If it is for that purpose.

Mr. Differding: That is my purpose.

Mr. Jones: I withdraw the instruction.

A. I am glad to be permitted to answer that question because I would hate to have the wrong impression in the record. I think we are pretty safe in saying that there are very few rates, if any, lower rates than you refer to that were initiated by the Port of Oakland.

Mr. Scoll: Can you name it?

By Mr. Differding:

Q: I didn't necessarily mean initiated by you alone, but initiated by you and your competitors on the east side of the Bay on the one hand, and with a higher basis of charge on the San Francisco side of the bay.

A. I believe we have tried in the East Bay, the private operators and the Port of Oakland, to keep ourselves pretty much on a competitive basis with the terminals at San Francisco, ours being on a daily basis and theirs being on a period basis. Sometimes they are lower, and sometimes [fol. 854] the East Bay rates are lower, depending upon

the length of the storage. I know definitely in the case of canned goods and dried fruit for any long time storage the rates are lower in San Francisco. That is very definitely the case on a commodity such as fertilizers.

Q. It has been your experience for more than ten years now in this San Francisco Bay Terminal Competition that the matter of lower wharf demurrage charges does exercise a definite influence over the movement of cargo, does it not, from one terminal to another?

A. I think it is a very important factor, yes.

Q. And you feel also, do you not, that all of the users of your facility should properly compensate the terminal operator for the use of those facilities?

A. Oh, it depends very largely upon conditions. I think rates ought to be reasonable and I think that the matter of costs should be taken into consideration where possible. I think in the case of a port where the facilities have just been constructed, going through a pioneering stage, that if you take the cost of operating those particular facilities by themselves and make rates so as to be compensatory, that you would have rates that would drive business away and there wouldn't be any business.

Q. Well, assume with me, Mr. McCarl, that this Commission should find that the present charges of the East Bay [fol. 855] Terminal operators are entirely too low and an unfair competitive practice with San Francisco, and then take the lowest cost terminal facility on the east side of the Bay, or any side of the Bay, and set that up as the proper measure, and that that would be substantially under the costs of the Port of Oakland, would you have any objection to such a situation or such an order of the Commission and ignoring, as you have just stated, the high costs that may be found in your facilities because of the constructing structures that will last for many years as compared to some one of your competitors?

Mr. Jones: What do you mean by competition? in that question?

Mr. Differding: Would he object to a basis of rates that would be prescribed upon the lowest cost terminal in San Francisco Bay, which would be substantially under his costs?

Mr. Jones: You mean, would he go along and meet that rate?



Mr. Differding: Yes, all things being equal. Of course, there are other competitive factors, but, generally speaking, would he go along?

A. I think in determining a rate that the matter of cost has to be taken into consideration. I think, however, it is most difficult to determine just what the cost of the par-[fol. 856] ticular demurrage is, or wharf storage, due to the different types of facilities and the different allocations of the cost items in the operation of the whole facilities. I think the facilities which were used in the study of the Railroad Commission—I am not quite so sure about the cost of wharf storage or wharf demurrage, but the other costs which were determined seemed to be quite reasonable and seemed to be satisfactory for the Port of Oakland.

Q. And those other findings of the California Railroad Commission with respect to dockage, tolls, and service charges, and a few other minor items have now been substantially or wholly adopted by the Port of Oakland, have they not?

A. Yes. I might state that the one item with which the officials of the Port of Oakland, and the Port of Oakland in general, were at variance with the railroad Commission was in the matter of wharf demurrage and wharf storage, which is set forth in a communication addressed to the Railroad Commission at the time of their investigation in 1936, which states quite clearly the position of the Port of Oakland.

Q. And is that the statement that you are now going to read from?

A. It is.

Q. Will you proceed to read it?

Examiner Basham: Wait just a minute. Let me see it. [fol. 857] Mr. Scoll: Yes, I want to see it.

(The paper referred to was handed to the Examiner.)

By Mr. Differding:

Q. Now, to follow up that question, Mr. McCarl, as I stated on the witness stand Friday, Dr. Edwards and I found that the lowest cost facility which was comparable in efficiency and volume of tonnage to any facility on San Francisco Bay was the Howard Terminal, and assuming with me for the moment that the United States Maritime



Commission should find that those costs of the Howard Terminal were the reasonable and proper costs upon which non-discriminatory rates would be constructed, and your costs were substantially higher, yet resulting in an increase in your rates, would you have any objection to going along with such an order?

A. I still feel it is quite difficult to determine just what the cost of wharf demurrage or storage is, and in the case of the Howard Terminal, I think, due to the fact that their facilities are quite old, constructed some time ago—I believe Mr. Howard has made the statement that they were constructed primarily for the handling of cargo between rail and vessels. When trucks came into the picture and became as important a factor as they are today, the costs determined at the Howard Terminal for wharf demurrage would not be representative. I believe if you would let me read this short statement it will—

[fol. 858] Q. Just a minute, before we get to that statement.

A. You told me to read it two or three times.

Q. Well, they may not be representative, but you also stated you did not believe the costs of the Port of Oakland would be the proper costs because of the fact of the huge expenditures put into the facilities to take care of the needs many years hence, and I think the answer is obvious that the rates that would result from using Howard's lower costs would be under yours, using your own costs.

Mr. Jones: I don't know if we can assume that, Mr. Differding.

Mr. Differding: If the rates are based on costs, that would be the inevitable result.

Mr. Jones: Not necessarily.

A. In my experience in terminal operation I think it is very difficult to determine the true cost for wharf demurrage. I agree that an effort should be made to try to determine costs, that ought to be an important factor in the making of rates, but I think the determination of rates for wharf demurrage and wharf storage, taking into consideration the fact that most of the major charges are for the account of some other service, it is most difficult to determine just exactly what the cost of wharf demurrage is.

Mr. Graham: Mr. Differding, may I suggest that I think your question assumed that if the Maritime Commission [fol. 859] should find these costs, would the Port of Oakland go along?

Mr. Differding: That is correct.

Mr. Graham: Now, it seems to me that we have not yet got an answer to the question. If the Commission cannot find what the costs are, obviously the assumption is of no value, but if they should find and do find, then I would like to have the witness answer the question.

Mr. Jones: May I say in regard to that question that I don't think Mr. McCarl would have the decision in the matter as to whether the Port would go along. He might indicate what his personal feeling would be, and, of course, his recommendation to the Board, but I don't think he can go any further than that.

Mr. Differding: I had that in mind. He is an expert witness and whether, of course, the Board would follow his recommendation is something else again, but it is upon his own knowledge and experience in the business that I am asking the question:

By Mr. Differding:

Q. Would you recommend to the Port that the resulting charges from the Commission's order be followed?

A. I would say that we have tried to be cooperative to the fullest extent in having uniform rates and practices throughout the district, and hope some time they will be brought more or less in line along the whole Pacific Coast, [fol. 860] although conditions are different in different sections, which makes it quite difficult to have an entirely uniform set of rates, so that if an order were issued by the Commission that seemed to be reasonable, of course, if the Commission had jurisdiction over the Port of Oakland we would have to follow. If they did not, it would be my recommendation that we cooperate to the fullest extent in trying to have uniformity and also to have fair and equitable rates both from the standpoint of the shippers and the operators.

By Mr. Scoll:

Q. Then your answer is "Yes?"

Mr. Jones: No, the answer is as he gave it.

Examiner Basham: His answers seem to be awfully long.

Can't you shorten your answer a little bit, Mr. McCarl?  
Go ahead.

The Witness: I might say that the condition—I think I answered the question.

By Mr. Differding:

Q. Before we get off on another one, answer this one: Assuming that all your competitors, whether they were publicly owned or privately owned, that each operator was going to publish the same charge in San Francisco Bay, and you didn't have to worry about competition at Portland, Seattle, or Los Angeles, would you recommend that the Port of Oakland go along with such a basis of rates?

[fol. 861] A. I believe if they took in Stockton, Richmond, San Francisco, Oakland, Alameda, and all the rest, that the Port of Oakland would not want to be holding out, if all the rest were in accord.

Q. And from that I assume that the answer is "Yes"?

Mr. Jones: As qualified.

A. Is that sufficient?

By Mr. Differding:

Q. Yes, as qualified, is that correct?

A. I will say "Yes, as qualified."

Q. Now, another matter, Mr. McCarl, is free time in the east side of the bay itself different from that at San Francisco, and was substantially the same procedure followed in the matter of free time back in 1927 up to the present time as that which has been stated here in connection with wharf demurrage or wharf storage?

A. The free time was arrived at through meetings with the other terminal operators about the Bay District and a uniform number of days was allowed for all trade routes, ten days.

Q. And did the Port of Oakland have objections to following the San Francisco basis of free time?

A. I don't recall particularly whether the Port of Oakland had any particular objection, but through the discussions I believe it was felt that the simpler we could get our rate basis—conditions were a little bit different on the San [fol. 862] Francisco side of the Bay than on the East Bay side; all the steamship people have their headquarters in

San Francisco, and it was a question, more or less, of pioneering, particularly in so far as the Port of Oakland was concerned, and we felt it would be better to have a uniform number of days for all trades, rather than to have a different number of days for the respective trade routes.

Q. Do you think that this pioneering is still going on, or have you more or less settled down to a normal routine at this time?

A. I think we are still doing some pioneering, but, however, we have signified our willingness to go along with the other operators in adopting the San Francisco free time schedule.

Q. Would the Board of Port Commissioners make any objection to the Railroad Commission of California that they were unwilling to go along with the recommendations as to free time in case No. 4090?

A. We said we had no objection to either retaining the present basis or changing it so as to conform to the San Francisco basis, whichever would be recommended by the Railroad Commission.

Q. Do you feel that the findings of the California Railroad Commission in case No. 4090 were reasonable and proper, based upon your judgment and experience in this area?

Mr. Jones: In so far as free time is concerned?

[fol. 863] By Mr. Differding:

Q. Yes, free time.

A. I think so. There might be different arguments as to just what the free time should be. It has been changed from time to time, but I think they are equitable as named in the San Francisco tariff, at least so far as my recommendation is concerned.

Q. Would you go ahead and read that portion of your statement pertaining to wharf demurrage that you previously referred to?

By Mr. Scoll:

Q. Before you read that, Mr. McCarl, I would like to ask a couple more questions. The title page of the Board of

Port Commissioners of the Port of Oakland Tariff No. 1, which is in the record as exhibit No. 70, states:

"Board of Port Commissioners of the Port of Oakland, Tariff No. 1, naming rates, charges, rules and regulations (subject to change without notice)."

You consider, do you not, that the provision, "Subject to change without notice," applies to all the rates and charges that are published in that tariff? Am I correct?

A. That is right.

Q. And in that you reserve your right to make any changes, as stated, without notice?

A. Yes, I think I explained to Mr. Differding the reason [fol. 864] for putting it in there, because we did not want to obligate ourselves to give every shipper a copy of the tariff and be sure that he got all corrections, and we wanted to be able to enforce our charges. Anybody that requests a copy of the tariff, we are always glad to give it to him.

Q. But, nevertheless, under that provision you can and do change without notice?

A. We always put our changes in our tariff, but I wouldn't say all shippers receive copies of the tariff.

Q. I show you now a copy of exhibit No. 63, a Formula for the Determination of Port and Marine Costs for Rate Making Purposes, by Ford K. Edwards. Did the Port of Oakland make the reproduced copies, mimeographed copies, if that is what this is, which have been introduced in the record and been used in this proceeding?

A. The Pacific Coast Association of Port Authorities has had those reproduced at their expense. Mr. Abel, of the Port of Oakland, was President last year, and I was the Secretary, and we had those reproduced at the expense of the Association.

Q. Now, what services are rendered by the Port under the classification of Warehouse Storage after the cargo has reached a place of rest in the transit shed?

A. Principally a matter of space occupied by the goods.

Q. It is then rental of space, is that all?

[fol. 865] A. There is a certain amount of overhead expense in the way of maintaining records.

Q. Excuse me. I said services, not costs. What services do you render the consignee of the cargo or shipper of the cargo? Perhaps I can get at it with a little more detailed questioning. If there is high piling, who pays for that?



A. We absorb that if there is any, which is not very often the case, except in the case of pineapple, which I could explain.

Q. Will you explain it?

A. In the case of pineapple that moves into the terminal in very large quantities, in order to keep the pineapple in one section rather than to spread it throughout all of the transit sheds, which is quite lengthy at the Outer Harbor Terminal, and also to conserve space even though the pineapple is to be reshipped within the free time period, we find it desirable to perform quite a little piling service on this particular commodity. If it moves out within the free time period the piling is chargeable to the other revenues which are derived from the handling of the commodity.

Q. You mean the Port allocates it against that? There is no charge made against the consignee of the pineapple, is there?

A. There is no charge incurred. Under the tariff there would be no storage and the expense would have to be allocated [fol. 866] to the other sources of revenue.

Q. Such expense would be absorbed by the Port?

A. That is right.

Q. Then the Port determines when cargo shall be high-piled and when not, that is correct?

A. Yes.

Q. So that is within your discretion to incur that expense and absorb it?

A. That is right.

Q. Now, what about the situation where a consignee wishes to make only a partial removal of goods that are temporarily stored in the transit sheds under your wharf storage rate? Do you permit partial removal?

A. We do to a certain extent.

Q. Do you charge anything for that?

A. No. We do not permit promiscuous distribution, such as is permitted in the usual warehouse.

Q. How do you prevent it?

A. Well, we state in our tariff that the storage of goods is optional with the management, and we determine through our knowledge of various accounts as to whether or not there should be storage in warehouses where a lot of distribution is required and we very often refuse to accept certain shipments for storage.



Q. Now, if a shipper or a consignee should, however, re-  
[fol. 867] quest the right to make partial deliveries, you  
would then permit it provided it didn't inconvenience the  
Port?

A. Yes, we make a number of partial deliveries.

Q. But you, in no case, make any charge for that privilege?

A. That is correct.

Q. It would happen, would it not, where there are partial deliveries, that the space occupied by that lot of cargo would be broken up during the course of those partial deliveries, is that correct?

A. Yes, possibly part of the shipment will be delivered during the free time period and the balance of it may be one day later, or two days later or three days later, or possibly some time later.

Q. Now, if there are consecutive partial deliveries, how do you assign the wharf storage rates on the amount that remains there at the end of each day?

A. The bill is once a month, so that the shipment—unless it is entirely delivered before the end of the month, in which case the actual number of days occupied by the goods is charged for. At the end of the month for the goods still remaining in storage the charges are assessed to cover that period.

Q. Now, in order to assess those charges properly and inspection and measurement would have to be made every day, would it not, in order to determine under your daily [fol. 868] storage rates how much was due?

A. No, all the charges are assessed on a weight basis and a record of the deliveries is furnished the office, and by their records it is determined the number of days occupied by the different amounts.

Q. Now, then, let us take a situation as an example: Let us assume that the free time expires today on a lot of cargo that is now at the place of rest in the transit sheds; tomorrow the consignee removes one half of the cargo and delivers it; on how much cargo is the wharf storage for tomorrow assessed?

A. On that portion that was delivered, if I understood you correctly, there will be one day.

Q. The free time expires today, so that beginning tomorrow morning you have the whole lot of cargo, but during the day the consignee delivers half of it. Now, would you make

a storage charge for tomorrow under your wharf storage rate?

A. On that delivery.

Q. On that one half of the cargo which remained or on the whole thing?

A. The portion that remains, you cannot determine just how many days that is going to remain, so you could not assess a charge on the portion that remains, but a charge has been incurred for one day on the half portion that remained one day over the free time period.

[fol. 869]. Q. Or a fraction of a day?

A. Yes.

Q. You do not break it down to less than a day?

A. No.

Q. And on the following day a quarter of the original amount is removed; then you would assess your charge on Wednesday as of that quarter which had been removed?

A. That is correct. Individual bills are not rendered.

Q. I understand so; but an account is kept in your office and from that account the bill is made up after the cargo is removed?

A. That is right, or at the end of each month.

Q. Now, where cargo which is at the place of rest in the transit shed is removed to one of the back spaces, for instance, Terminal Building C, do you charge for the transfer?

A. That service would be most unusual. We very seldom do that. As I say, at the Outer Harbor Terminal outside of pineapples, pretty nearly all the cargo is outbound. You might limit that to the 14th Street Unit. We have some other inbound cargo over at Seventh Street Unit.

Q. Let us take the outbound cargo. Some of that is stored prior to its actual delivery to the transit shed in one of your warehouses, is it not, in terminal building C?

A. Unless it is going to long time storage pretty near all the cargo is put into the transit shed. We have a wide shed so as to accommodate the cargo longer than the free [fol. 870] time period.

Q. Now, on the inbound do you ever transfer cargo from the transit shed to one of the storage places?

A. We have no space to transfer to. The transit shed is the only space we have.

Q. Then Terminal Building C is confined only to outbound cargo?

A. With the exception of Pineapple. We make that exception, but otherwise it is outbound.

Q. When that is transferred from Terminal Building C to the transfer space is there a charge?

A. If it is on a space rental basis there is a charge of 60 cents a ton. Those accounts are very limited. Otherwise, if there is any put in Terminal Building C, either from cars or trucks, and then transferred over to the transit sheds, that expense would be for the account of the Port of Oakland.

Q. Then you would absorb that cost or that charge?

A. Yes, but we would not put anything in Terminal Building C unless we had very good reason to believe it was going to stay there a long time.

Q. What other transfer costs, involved in moving cargo from one portion of your terminal to the place of rest where it will be ready for loading, do you absorb?

A. We don't have that. The cargo is interchanged between the rail and water carriers from the point of rest [fol. 871] without any service being performed by the Port of Oakland, with the exception of this Pineapple.

Q. If there is a car loading or car unloading service involved in the receipt or delivery of cargo which is held under wharf storage, do you assess a carloading or unloading charge under your tariff?

A. Yes, if the car loading or unloading service is performed we assess a charge.

Q. In response to questioning by Mr. Differding, you made some reference to the San Francisco rates, and you said that you had lowered the rates at one time or another in order to meet San Francisco competition. Now, will you state what those rates were that you lowered to meet San Francisco competition?

A. Canned goods and dried fruit, particularly.

Q. That is, the wharf storage rate was lowered?

A. Yes; a large part of our business consists of canned goods and dried fruits.

Q. And when was that rate lowered?

A. Oh, quite a number of years ago.

Q. Have you recently made any reductions in the wharf demurrage rate to meet San Francisco competition?

A. There are some rates now in San Francisco which are lower, but we have not met them. We have lost some business, however.

Q. Which ones are they?

[fol. 872] • A. Fertilizer, particularly. That takes in quite a number of commodities under Fertilizer and Fertilizer materials.

Q. A number of commodities, but actually, for the purpose of the charge, it is a single classification?

A. That is right.

Q. Have you any other classifications in mind?

A. Their rates are lower on other commodities; however I don't recall that they have been particularly competitive. They have trans-Pacific service, where the Port of Oakland does not as yet have that service, at least to the same extent that San Francisco does.

Q. So that on some of these that you are referring to, San Francisco is lower than Oakland, on some of these charges, and you acknowledge that Oakland then is not competitive with San Francisco?

A. We don't have steamer service, and we don't see any necessity for putting in rates where there is no movement.

Q. That is what I was getting at. Let us confine ourselves to the classifications of commodities in which you are competitive, and tell me what wharf demurrage rates you have recently lowered in order to be competitive with your East Bay competitors.

A. Competitive with the East Bay competitors?

Q. Yes.

A. As far as the East Bay operators are concerned, we [fol. 873] usually discuss any proposed rate changes prior to making them effective, and therefore we nearly always put them in at the same time. As mentioned a little while back, however, I think I am safe in saying that by far the greater percentage of the reductions have been initiated by the competitors of the Port of Oakland.

Q. Have you any specific classifications or commodities in mind when you say that?

A. Well, I believe some time after we lowered out rates on fertilizer—not to the extent that San Francisco did, however,—then we made some increase. I might put it this way, we made some increase in the fertilizer rate which made the East Bay rates higher than the San Francisco rates; after which we lost some tonnage to San Francisco.

Q. When did that take place?

A. I think that was during 1938 or 1939.

Q. Now, then, give me an instance of the commodity in which you are competitive with either of the Bay Terminals, where in recent times you made a reduction in order to be competitive with the others?

A. Beans and grain.

Q. When was the bean reduction?

A. I just have the current pages in our tariff. That was, I would say, about three years ago.

Q. Who initiated the reduction in the East Bay?

A. I believe Parr-Richmond Terminal and Stockton together. I don't recall which one had the lower rate in first, but we with the other terminal operators succeeded in getting them to make some increase in their rate. They used to have three-quarters of a cent per ton per day and they now all have one cent.

Q. What other operators are you talking about? Are you talking about your East Bay competitors now? I am trying to confine this to your East Bay competitors?

A. Parr-Richmond Terminal we consider an East Bay Competitor; and I believe the other private operators, Howard and Encinal, all wished to meet the rate of Parr-Richmond Terminal, probably more so than ourselves, because at that time we were receiving practically no beans.

Q. Did you discuss this reduction with them?

A. Yes.

Q. Now, what about grain that you mentioned? When did you reduce grain to meet competition with an East Bay Terminal, and which East Bay Terminal?

A. It was along about the same time, and the Parr-Richmond Terminal, I believe, was the principal competition that we had to meet. The other private terminal operators likewise were handling much more grain than we were. I don't want it to appear that I am putting the burden on them, but I think it is a fact that we were not so much interested in it at that time as they were.

[fol. 875] Q. And you discussed that with them prior to making the change?

A. Yes. As a matter of fact, there was a hearing before the California Railroad Commission, which ordered some adjustment in the rate at the Parr-Richmond Terminal, or as a result of that hearing an adjustment was made; I think it was voluntary.

Q. Voluntarily made by all of the East Bay Terminals?

A. Yes.

Mr. Townsend: What commodity was that, please, that you were talking about?

The Witness: Beans.

Mr. Scoll: We were talking about grain.

By Mr. Scoll:

Q. That same thing applied to grain?

A. Yes.

Q. And they were both made about the same time?

A. That is my recollection, yes.

Q. You have made it a practice, have you not, on these matters, to discuss with your East Bay competitors these reductions that are necessary to meet competition?

A. We have. Whether we are in violation or not, we have.

Q. Now, will you mention a commodity or a class of commodity in which you have been competitive with East Bay and in which you are primarily or were primarily interested?

[fol. 576] A. We were interested in these commodities too, but I don't think to the same extent at that time as Howard and Encinal were, because they were handling the greater volume of the business.

I think another one was wool. That rate has gone down and then gone up again, and at that time I recall particularly, I think some commitment was outstanding on the part of the Port of Stockton and we reduced our rate to meet that competition. We consider Stockton and East Bay competitors too.

Q. And when was that?

A. Oh, that was about two or three years ago.

Q. What about canned goods, for instance? What is the competitive situation on canned goods?

A. That rate of  $11\frac{1}{4}$  cents per ton per day has been in effect for quite a number of years.

Q. Among all the East Bay Terminals?

A. No; at the Parr-Richmond and at Stockton they used to have a rate of three-quarters of a cent a ton a day. Through conferences we succeeded in getting them to increase their rate to  $11\frac{1}{4}$  cents per ton per day so that we are all on a uniform basis.

Q. Now, your attorney, Mr. Jones, very kindly furnished me with a list of leases and licenses of firms that hold from the Board of Port Commissioner of the City of Oakland, and I would like to read the names of those lessees and



[fol. 877] licensees to you, and ask you a question or two about each one. Three of them that are here I will not question you about because they are already in the record, and those three are Albers Brothers Milling Company, Howard Terminal, and the McCormick Steamship Company. The latter holds under a license and the first two under leases, I believe.

The Atlas Imperial Diesel Engine Company; what space do they rent?

A. Some of those industrial leases out in East Oakland, the so-called Brooklyn Basin, I am not very familiar with. There are some long time leases, and just recently here, as a result of a court decision, the Port of Oakland reacquired that property and have negotiated some new leases. They do not involve tonnage over the terminals particularly; they are private industry.

Q. For manufacturing establishments?

A. Yes.

Q. Or processing establishments?

A. Yes, they are manufacturing.

Q. Do they adjoin any of the terminals?

A. No, none of the general cargo terminals. They are out near a couple of lumber facilities, out in East Oakland.

Q. What about California foundries? Does the area that is leased to that concern adjoin one of the terminals?

[fol. 878] A. No, that is not a competitive type of lease at all. I mean, as I say, it does not affect the other terminal operators as far as competition is concerned.

Q. Well, I—

A. The reason I am not familiar with that lease—

Mr. Jones: Possibly, Mr. Scoll, I know more about these leases than Mr. McCarl does. They were all drawn in my office, and outside of those particular leases which involve shippers such as Rosenberg and Libby, Mr. McCarl would have very little to do with the negotiation of the lease.

The Witness: Maybe I can tell you the ones I am not familiar with and he can take those.

By Mr. Scoll:

Q. All right, we can do it that way. Coos Bay Lumber Company?

A. That is the arrangement with the Coos Bay Lumber Company at the Ninth Avenue Terminal. The lease has

just recently been renewed. They pay a stipulated amount of rent and ship their lumber over the Ninth Avenue facility.

Q. So that is a lumber storage arrangement, is it?

A. Yes, they have a storage area in the rear of the Ninth Avenue wharf.

Q. Which is under license to the McCormick Steamship Company?

A. Half of the shed of the Ninth Avenue Terminal is [fol. 879] under assignment to McCormick.

Q. Do they use your side or their side?

A. They just ship the lumber and they operate over the Oakland Dock, which is handled by the Port of Oakland, and McCormick has nothing to do with it.

Q. Now, J. E. Higgins Lumber Company?

A. I think probably Mr. Jones can give you information on that.

Mr. Jones: That is Stroebel.

The Witness: That is Stroebel Hardwood. They have a lease facility in proximity to the Grove Street Terminal, that is, I would say not very far distant from the Grove Street Terminal. They utilize that facility for the storage and sale of hardwood lumber. They ship some of their lumber through the Port of Oakland facility and some of it through a private facility.

Q. And both of those companies rent on a square foot basis?

A. Their flat rental is based upon the value of the facility or—I don't think it is on a square foot basis.

Mr. Jones: I might correct that statement. Any of the long term leases, every lease of more than one year, by our charter has to be let out by public bidding; so it is impossible to say upon what particular basis the figure is arrived at.

Mr. Scoll: I see.

[fol. 880] By Mr. Scoll:

Q. And S. T. Johnson, do you recall that?

A. I think Mr. Jones can give you more information on that.

Q. All right, we will skip the ones you cannot answer on for a moment. Marine Trading Company?

Mr. Jones: That is a fisherman's pier.

A. I think he knows more about that than I do.

By Mr. Seoll:

Q. The L. K. Wood Lumber Company?

A. That is a lumber concern which has a lease from the Port of Oakland for a facility at East Oakland used exclusively or at least used, for the handling of their lumber primarily. I think there is a reservation in there, if I recall correctly, whereby the Port of Oakland may use the facility if it so desires.

Q. The Union Diesel Engine Company?

Mr. Graham: May I stop you there? He didn't say whether these people used the Port of Oakland.

Mr. Jones: There is a public dock in front of the L. K. Wood plant and they use it.

Mr. Graham: A Port of Oakland dock?

Mr. Jones: Yes, sir.

By Mr. Seoll:

Q. The Union Diesel Engine Company?

A. I think Mr. Jones can tell you more about that.

[fol. 881] Q. The Parr Terminal Company?

A. The Port of Oakland took over from the Parr Terminal Company the transit shed in the Outer Harbor area which we now designate as the Seventh Street Unit of the Outer Harbor Terminal.

Q. You operate that now?

A. We operate that as part of the Outer Harbor Terminal.

Q. Is this lease in existence?

Mr. Jones: The rear portion of the lease, which was not recaptured by the city, is still operated by the Parr Company, that is, it is sub-leased by them to other concerns but they collect the rental.

The Witness: I was not sure whether that was Parr Terminal.

Mr. Jones: It is where the oil tanks are.

By Mr. Scoll:

Q. Moore Dry Dock Company? Is that the Moore Shipbuilding?

A. Shipbuilding, yes.

Q. Is that adjacent to one of your terminals?

A. It is adjacent to the Howard Terminal, quite near distant to the Grover and Market Street Terminal, but more closely related to Howard Terminal.

Q. And they use the Port of Oakland facilities?

A. For part of their traffic, and these private terminals for part. I think maybe the private operators get more than we do.

[fol. 882] Q. Do you know whether the sub-lessees who still hold under that portion of the Parr Terminal lease which is still operative use the Port of Oakland facilities?

A. Yes. As far as the bulk storage facilities for the storing of petroleum products are concerned, those are handled through pipe lines which connect with the vessels at a wharf in the Outer Harbor Terminal.

Q. Now, the Libby, McNeil & Libby lease; is that a lease of facilities that adjoin the terminals and are operated by the Port?

A. That lease covers the Terminal Building B, immediately in rear of the transit shed of the Outer Harbor Terminal. They pay a rental for that facility and are required under certain conditions to route their traffic through the Outer Harbor Terminal.

Q. They are required to route their traffic over your terminal?

A. With certain exceptions.

Q. What about Rosenberg Brothers & Company, A and AA?

A. That is similar to the lease with Libby, McNeil & Libby.

Q. And contains the same provisions?

A. Yes.

Q. Rosenberg Brothers & Company, E.

A. That is the same, simply that they held a structure at [fol. 883] different times, and collectively, you might say, they make one operating unit now.

Q. And that lease covers facilities that are adjacent to the Oakland Terminal?

A. The Outer Harbor Terminal, yes.

Q. And similarly, they have covenanted to use the Oakland Terminal for their goods?

A. That is right.

Q. Now, do you know if any of the other leases that we have read, in addition to the Libby, McNeil & Libby and Rosenberg leases, with the exception of Albers, which is already in the record, contain covenants that they will use the Port of Oakland facilities?

A. I think that is one—

Mr. Jones: I can shorten that, Mr. Scoll, and stipulate that practically every lease that we draw contains a provision that the lessee shall ship over the municipal docks if he can do so, getting the service of vessels at not to exceed the cost at any other terminal in San Francisco Bay. That is the general policy of the Board of Port Commissioners.

Mr. Graham: May I ask in this connection right now, with your permission, Mr. Scoll, if there is a uniform clause to cover this subject, and, if there is, might we have it in the record?

Mr. Scoll: I was going to suggest later on or ask them [fol. 884] if they would furnish copies of these leases.

Mr. Graham: That would be better yet.

Mr. Jones: I think that is impossible. In the first place, some of these leases are—let me say this: I can furnish blank mimeographed forms which cover practically all of our leases. In other words, we have a standard form of a long term lease and a standard form of a lease for one year or less. I will be glad to furnish those, but the detail that would be necessary—after all, there are so many of those leases that I don't see it would serve any useful purpose, and, besides, I think I have been rather liberal from my own point of view in allowing the testimony along this line. I don't see the relevancy of our leases to persons who — not subject to this proceeding.

Mr. Scoll: I don't want to burden you unduly to perform a lot of unnecessary work, but we have in the record already the Albers Brothers lease which contains a clause with respect to using the facilities of the Port of Oakland and also certain clauses regulating competition.

Mr. Jones: I wouldn't construe it that way.

Mr. Scoll: At least it might be so construed. Now, as I say, I don't want to cause you a lot of unnecessary work,

so if we could perhaps confine the requests to those leases which the witness has testified to, which contain those clauses, which he knows about, then we can cover the rest of [fol. 885] it by your standard form.

Mr. Jones: Practically all of them do. As a matter of fact, every lease that has been drawn in recent years does contain that provision.

Mr. Scoll: Well, will you furnish for the record copies of the Rosenberg lease and Libby, McNeil & Libby?

Mr. Jones: May I explain that in connection with the Rosenberg leases there are three such leases; two of them expired last November and negotiations are now in progress looking toward the renewal of those leases, so that what you have now is merely a holding over on a month to month basis, and it is merely a temporary thing. In so far as the lease on Terminal Building E is concerned, that continues for two years in the future.

Examiner Basham: Have we reached a convenient stopping place here?

Mr. Scoll: Off the record for a moment.

Examiner Basham: Off the record.

(Discussion off the record.)

Mr. Scoll: I will ask the witness to identify these and we will put them in the record.

By Mr. Scoll:

Q. I show you now a newspaper copy of a notice of intention to make a lease, which bears at the bottom of it a pencil notation, "Warehouse A, Rosenberg," and on the other side is the date, "Oakland, California, Friday, April [fol. 886] 6th." Can you state whether that is the notice of intention that was published with respect to the Rosenberg lease?

Mr. Graham: May I ask which one of those this is if you can tell?

Mr. Scoll: I am going to.

A. I understand that is correct.

By Mr. Scoll:

Q. Do you know which terminal that applies to?

A. I believe that is the last one.



Mr. Jones: Won't it be in the title?

Mr. Scoll: I am informed by Mr. Jones that the notice of intention relates to Terminal Building A. I offer that document for the record.

Mr. Jones: For the purpose of the record I want to enter an objection as to the materiality of this lease in this proceeding. As far as the form, and so forth, go, I have no objection. I am, of course, pointing out that that particular lease has expired by its own terms.

Examiner Basham: What is the relevancy of this anyway, Mr. Scoll?

Mr. Scoll: It relates to the matters that we dealt with in connection with the Albers Milling lease, Mr. Examiner. You, at that time, ruled that the Albers Milling Lease was admissible, and this is admissible, I should think, on the [fol. 887] same grounds.

Examiner Basham: Is it true that this relates to a lease that has expired?

Mr. Jones: That is all true. Of course, in accordance with its own terms it is holding over subject to the same terms on a month to month basis.

Mr. Scoll: And the Rosenberg Brothers are holding under that lease such tenancy as they have?

Mr. Jones: Subject to the terms of the lease, yes.

Examiner Basham: I will receive it as exhibit No. 96.

(The document referred to was marked "Commission's Exhibit No. 96," and received in evidence.)

By Mr. Scoll:

Q. I show you now a typed copy, dated December 15, 1939, by and between the city of Oakland and Libby, McNeil & Libby. Can you identify that as a copy of the lease of the Libby, McNeil & Libby Corporation?

A. (After examining) Yes.

Mr. Townsend: What is the date of that?

Mr. Scoll: December 15, 1939.

Mr. Geary: What period does that lease run for, Mr. McCarl?

The Witness: Ten years.

Mr. Scoll: I offer it in evidence.

[fol. 888] Mr. Scoll: The same objection, Mr. Examiner.

Examiner Basham: It will be received as exhibit No. 97.

(The document referred to was marked "Commission's Exhibit No. 97" and received in evidence.)

By Mr. Scoll:

Q. I show you now a form of license and agreement for the use of wharf property. Can you identify this as the form of license which is customarily used in granting licenses or permits for less than a year by the Port of Oakland?

A. (After examining.) Yes.

Mr. Scoll: I offer it in evidence.

Mr. Jones: The same objection.

Examiner Basham: It will be received as No. 98.

(The document referred to was marked "Commission's Exhibit No. 98" and received in evidence.)

By Mr. Scoll:

Q. I show you at this time a Port of Oakland lease of real property, which is a mimeographed form. Can you identify this form as the form of lease which is customarily entered into by the Port of Oakland for leases of a year or longer?

A. (After examining.) Yes.

Mr. Scoll: I offer it in evidence.

Mr. Jones: Same objection.

Examiner Basham: It will be received as No. 99.

[fol. 889] (The document referred to was thereupon marked "Commission's Exhibit 99" and received in evidence.)

Examiner Basham: May we stop here, Mr. Scoll?

Mr. Scoll: Yes.

Examiner Basham: We might as well settle the question in regard to the night session. Who wants one?

Mr. Scoll: Mr. Examiner, I would suggest that it would facilitate our finishing here tomorrow if we can go on tonight. While I am in the position of being the Commission's lawyer and for that reason I don't want to be unduly anxious to ask for any favors that would inconvenience anybody, I would like to get through here tomorrow and get to the press of other work. I think that since we have

now three East Bay Terminals yet to be heard from, and possibly other witnesses who will want to take the stand, I would certainly like to see us have a night session.

Examiner Basham: What is the particular reason why we should get through tomorrow?

Mr. Graham: You will not get through tomorrow in any event. How many witnesses do you have to go yet?

Mr. Scoll: We have three witnesses to go, and that is already in the record: San Francisco Board of Port Commissioner, Encinal, Howard and Parr. Now, in view of the rather lengthy, detailed consideration that has been given to the question of just two witnesses, it is my assumption [fol. 890] that we would go a little faster tomorrow. I think if we can finish with the Port of Oakland here today we will not have much trouble tomorrow.

Mr. Jones: Might it not be better to run tomorrow night if we find a night session is necessary?

Mr. Scoll: That would not work tomorrow night. I am leaving here tomorrow and I would not be able to go on tomorrow night.

Mr. Graham: As far as I am concerned, I will work if you want to. I must confess that night work slows everybody down after a long session like we have had today, but if you want to work I will not raise any objection.

Mr. Geary: What time would you convene, Mr. Examiner? It is now nearly six o'clock.

Examiner Basham: I suppose about seven o'clock. Off the record.

(Discussion off the record.)

Examiner Basham: What is the attitude of the rest of the parties toward a night session tonight?

Mr. French (Representing Mr. Kilkenny): As far as the Respondent Board of Harbor Commissioners for San Francisco Harbor, are concerned, we would not be favorable to going on tonight. We more or less understood that our witnesses would not be called until Mr. Kilkenny is here.

Mr. Scoll: That is right.

[fol. 891] Mr. French: And we have made our plans in accordance with that understanding, and I assume other people have business which is arranged in reliance upon your running during the regular hours. If we could know of it in advance so we could prepare for it, it would be all right.

Mr. Scoll: We are not going to call any witnesses from the Board of Harbor Commissioners. I told the Attorney that we would not call them until tomorrow. My reason for trying to get through here today with Oakland and with Howard is so we can call your witnesses the first thing tomorrow morning. That is part of the reason for having this night session, in order to be able to accommodate you as I promised you I would try to do.

Mr. Vaughan: I have no objection to a night session but I do not think an hour's adjournment will give us very much time for dinner. I think we at least ought to have an hour and a half or two hours.

Examiner Basham: We will adjourn now and reconvene at eight o'clock.

(Whereupon, at 5:50 p. m. a recess was taken until 8:00 p. m. of the same date.)

---

[fol. 892] After Recess (Evening Session)

(The hearing was reconvened at 8:00 p. m. pursuant to the taking of a recess.)

---

M. D. McCARL resumed the stand and, having been previously duly sworn, testified further as follows:

Direct examination (continued).

By Mr. Scoll:

Q. I show you now, Mr. McCarl, a copy of a license of the Port of Oakland to the Keystone Steel & Wire Company, which is dated July 7, 1939. Will you examine this and identify it if you can as one of the form of licenses previously introduced as exhibit No. 98, which has been filled in?

A. (After examining.) I believe that is representative of the completed one.

Mr. Scoll: I offer it for the record.

Examiner Basham: It will be received as Exhibit 100.

Mr. Jones: The same objection, Mr. Examiner.

(The document referred to was marked "Commissioner's Exhibit No. 100" and received in evidence.)

By Mr. Scoll:

Q. You have a statement there which I believe you would like to read, and we have delayed you. Proceed.

Mr. Graham: May I suggest that the witness go kind of slow if he is going to read a statement, unless he has [fol. 893] a copy of it.

The Witness: I have a copy. (Handing to counsel.)

A. The following is a brief statement which pretty well portrays my views on the matter of wharf demurrage and wharf storage.

In considering these items, that is, wharf demurrage and wharf storage, a great deal of thought must be given to the type of facilities involved and the underlying causes which prompted the designing of such facilities. In the early days of terminal operation, due to the fact that most of the trucking at the terminals was performed by hand transfer, each truckload of very small weight requiring the time of a laborer, it was essential that very narrow transit sheds be designed and constructed, as the item of labor was one of the principal items of cost of terminal operation. With the advent of automotive equipment, however, for the movement of goods about the terminal, the item of labor became of secondary importance, and in the designing of transit sheds, sheds of much greater width were adopted. With these modern facilities containing much greater areas than those of early design, large cargoes can be accommodated with a minimum of labor expense. The cost of earloading, ear unloading, high piling, stevedoring, etc., have been greatly reduced. Also, in the designing of terminal facilities, it is necessary to make provision for the accommodation of increased traffic which a terminal operator naturally expects to develop. Before a terminal operator can solicit the patronage of steamship lines, it is necessary that he first have sufficient facilities to accommodate the tonnage—both inbound and outbound—to be handled by such lines, with proper allowance for expansion. Thus it would appear that the investment in transit shed facilities is primarily chargeable to the transit movement of cargo. The goods are placed in the transit sheds for movement, as a rule, within a certain period of time, known as free time period. The principal revenues to the terminal accrue in connection with the

transit movement, all labor services, as a rule, being performed in connection with the transit movement. Should the goods remain on the space on which they have been placed for transit movement, one, two, three or more days beyond the free time period, there is no additional labor expense whatever as the space is generally not actually required for the handling of new cargo. This has reference to modern facilities. All the municipal facilities of the Port of Oakland which have been constructed during the past ten years and which constitute practically the entire direct terminal operations of the Port are of modern design. These facilities were paid for by the public, and it is expected by the public that they will be accorded just and reasonable rates in keeping with the cost of the service [fol. 895] provided. We do not see how the Port of Oakland would be justified in assessing a charge for any service which it does not perform. We have reference here to the item of "Handling" or "Transferring and piling" in connection with goods which remain in the transit sheds over the free time. Neither do we see how the Port of Oakland can consistently assess a charge for a period of say 30 days' time, when the space for which the charge is assessed is utilized for only a small fraction of such time.

From the standpoint of competition, and what the traffic will bear, it is necessary that consideration be given not only to competitive terminal and warehouse facilities within the San Francisco Bay District, but also to competitive facilities at points of shipment—other ports—interior warehouse facilities and facilities of shippers at their industry or plant locations.

By Mr. Scoll:

Q. Mr. McCarl, Colonel Allin stated that it was his opinion that a proper wharf demurrage charge should be a penalty charge. Do you agree with that statement?

A. No, I don't. I naturally recognize the fact that in the case of certain types of facilities which were not constructed with the view of taking care of storage, in that case it would seem as though it should be a penalty charge. However, with the facilities constructed of ample area, such as the Port of Oakland facilities, we think that it is [fol. 896] perfectly proper to permit the goods to remain in storage, and it really adds to the revenue of the terminal



operator, rather than to decrease the amount of such revenues.

Q. You regard your terminals, that is, the Port of Oakland Terminals, as being somewhat in the development stage, is that correct?

A. I would say we had not passed the development stage yet.

Q. And so that the policy of the Commissioners who control the Port and its facilities, is to do whatever is necessary and to take whatever position would secure a greater movement of cargo through the Port of Oakland and across these terminals?

A. To the extent that we consider it in the public interest to do so.

Q. Well, in your leases and your various activities you have sought to follow out a policy which regards the port facilities which you have there as not yet in their fullest use, is that correct?

A. Yes, that is correct.

Q. And you are anxious to bring them to their fullest use?

A. Yes, and to possibly construct additional facilities. Sub-structures have already been provided so that if you increase the present facilities it would require only the addition of the superstructure.

Q. Have you plans to increase the present facilities in [fol. 897] the near future?

A. That has been given some consideration. It was considered by the Port during the last heavy shipping season.

Q. And how are such additional facilities to be financed?

Mr. Jones: I submit, Mr. Examiner, that that is absolutely immaterial to this hearing.

Mr. Scoll: The reason for my question, Mr. Examiner—

Examiner Basham: Overruled.

A. The original facilities were constructed out of bond moneys, and additional facilities have been constructed out of revenues obtained from the operation of the Port, and the original issue of \$10,000,000 has not been depleted.

Q. Do the Commissioners of the Port of Oakland have authority under the statute to issue bonds?

A. It is my understanding that the City Council has to approve any bond issues.

Q. But, subject to such approval as is provided by the statute, the Board of Port Commissioners of the Port of Oakland have raised money through the issuance of bonds, is that correct?

A. Yes. I think my last answer should be that the voters have to approve the bond issues, rather than the Port Department of the City Council.

Q. That is, the voters of the municipality?

A. Yes.

[fol. 898] Q. And then after an issue of bonds has been approved by the voters of the city of Oakland, then such bonds are sold to the public and the funds derived therefrom are funds for the exclusive use of the Port of Oakland?

A. If the bond issue is for such purpose; whatever purpose it is.

Q. Do you happen to know how much money has been obtained by the Board of Port Commissioners of the Port of Oakland through the issuance of bonds up to date?

A. Some of the funds derived from the original issue of \$10,000,000 have been used for airport purposes. I do not recall right offhand—maybe I can find in my records here; possibly Mr. Jones might know, exactly how much has been spent for terminal improvements. I believe it is probably somewhere between \$7,000,000 and \$8,000,000.

Q. Now, have there been years when the revenues from the terminals have not equaled the expenditures?

A. The provision whereby the interest on the bonds is to be taken care of through taxation through the City Council, means that we do not take the item of interest into consideration. Outside of the item of interest the revenues have always been more than sufficient to cover the other expenses.

Q. Now, then, the interest on the bonds is obtained through direct taxation of the municipality?

A. That is provided for in a charter amendment.

[fol. 899] Q. And by a vote of the City Council of Oakland?

A. By a vote of the People; that was provided for.

Q. But I mean, if there are not sufficient funds in the Treasury of the Port or the municipality to meet those interest payments, then a tax is levied to meet them?

Mr. Jones: I think I might clear that up, Mr. Scoll. It has been the policy of the Board of Port Commissioners not to use its revenues for the amortization of or payment of interest on the bonds, but to take its operating revenues and plough them back into facilities, and outside of certain sums, more or less minor, in cash which have been given to the Council, all of the amortization and interest payments on those bonds have been serviced by direct taxation. I might say that our operating revenues are sufficient to meet all those bond requirements, but that is the policy of the Board.

Mr. Scoll: That is, are sufficient to meet them, including interest and amortization, over and above operating expense?

Mr. Jones: Yes, interest and amortization.

The Witness: Additional facilities have been constructed out of these earnings.

Mr. Scoll: I have no further questions.

By Mr. Differding:

Q. I have a few questions, Mr. McCarl. I show you [fol. 900] exhibit No. 61 in this proceeding, which is the final report of Dr. Edwards and myself, and at page 102 an illustration is given of two tons of canned goods piled on the dock one tier high for 60 days, which shows an overall cost of 85.48 cents, and the individual items are: Checking, 5 cents per ton—as I understand your contention in that respect, it is that the charge is not incurred, is that correct?

A. Yes, that is my view, that the checking is chargeable to another item of revenue.

Q. And what item is that?

A. The service charge, and the car unloading sometimes.

Q. You hold that view even though there may be handled such a type of account as is shown on pages 106 and 107, which shows a typical type of so-called distribution from the docks by one of the terminals on the east side of the Bay, and yet you contend that there is no additional checking involved in the distribution of such a shipment, is that correct?

A. I would not call that typical for the Port of Oakland at all.

Q. Would you say that you have never handled on your docks inbound shipments typical of that shown on 106, and 107?

A. I would say that would be a very extreme case if we handled it at all.

Q. Now, I am asking you if you ever had a shipment of that kind?

A. I would say possibly a shipment.

[fol. 901] Q. Now, bearing in mind that the costs shown on page 102 for this typical shipment of canned goods are the average costs of all the tons involved at the lowest cost facility, we still find 5 cents per ton average. Do you feel that that cost is not representative of what transpired on the Port of Oakland facilities?

A. I would want to give that a lot of study before I would say that was a representative cost.

Mr. Graham: What page is that?

Mr. Differding: That is page 102.

Mr. Graham: Thank you.

By Mr. Differding:

Q. The next item is Miscellaneous moving, where it was found that the average cost on all the tons handled for a yearly period was 2.5 cents per ton. Do I understand correctly that you do not incur a similar cost at the Port of Oakland?

A. I would say that is not representative of the municipal facilities. Very seldom do we move any cargo.

Q. But can we understand that there is some cost, however slight it may be, that is incurred for checking and miscellaneous moving which would not ordinarily be incurred on cargo that is handled under the service charge during the free time period, is that correct?

A. I would say the average would be very small. The high piling of pineapple would have some tendency to make [fol. 902] some charge, but outside of that there is very little that could be charged to the moving of cargo.

Q. But, in any event, you do find it necessary on your inbound shipments of canned pineapple to occasionally high pile the goods, is that correct?

A. We do.

Q. And that purpose is to conserve space on the docks?

A. Both in connection with transit movement as well as storage.

Q. And the Port of Oakland absorbs those costs?

A. I wouldn't say we absorb them. We get good revenue both on the inbound movement and the outbound movement.

Q. I am referring to the cost of high piling. You do not pass those charges on to the shipper or the vessel in any way, do you?

A. If it moves within the free time period I don't see how they could be. It could not be charged against storage if they moved out during the free time period, but they still exist on lots of occasions.

Q. The next item is Non-variable overhead, 7.1 cents per average ton, which is explained on page 100 of exhibit 61, and I direct your attention to those items and ask you if you do not incur similar expense in the operation of your facilities and the handling of wharf demurrage cargo?

A. I would say there is some overhead expense chargeable to storage; just how much I think would be quite difficult to determine.

Q. But you will agree with me that there is some?

A. Yes.

Q. Now, the next item is Variable Overhead, which is 18.34 cents per average ton, which is explained on page 101 of exhibit 61. Would you mind looking over those items of expense to see if they are typical in some degree of the expense incurred by the Port of Oakland in handling wharf demurrage cargo?

A. I would say there is some expense but the determination of it would be quite difficult to obtain.

Q. But again you will agree that practically all of those items, to some extent, whatever degree it may be, do exist in your accounts as well as we found in the accounts of the private terminals?

A. To some extent, yes.

Q. Now, the next and final item is Floor Space cost for two tons, taking 7.4 square feet per ton at 3.55 cents per ton for thirty days, which, for the illustration, two tons of canned goods, amounts to 52.54 cents per ton. Now, on these facilities which you have just described, which the Port of Oakland has in recent years constructed, you have no quarrel but what that figure at least approximates, or

more probably is under, the similar floor space cost for the facilities operated by the Port of Oakland?

Mr. Jones: Just a moment, please. There is no showing [fol. 904] that this witness has made any cost study at all about the per square foot cost of these structures. The record does show that these structures are of a different kind from those to which this exhibit refers. Now, it may be that the cost of construction is higher or lower, but that is not in evidence. However, it may well be that the life of these structures is to be extended over a much greater number of years, and so, in figuring the necessary revenue to be derived per year per square foot by those structures, all those factors have to be taken into consideration. The witness has not been shown to have the information necessary to enable him to answer the questions.

By Mr. Differding:

Q. You have never made such a study yourself of the facilities operated by the Port of Oakland in handling wharf demurrage cargo, have you, Mr. McCarl?

A. No, I have not, and my views as to how to determine that expense are, I believe, somewhat at variance with some of the other views too. I do not feel particularly that because the car space is occupied for one or two days over the free time that the cost of the facility is particularly chargeable to storage because I believe ample space is provided in the structure so as to accommodate a certain amount of cargo over the free time, and that space very likely would not be used for transit cargo, and it provides a [fol. 905] revenue that would otherwise not be provided.

Q. I see. But you have seen fit in your other services, and without any cost studies, to assess this 10 cents per ton increased toll charge, which was put into effect on December 1, 1939, haven't you?

A. Yes; that has not been based on cost; it has been based on competitive conditions and what the traffic will bear.

Q. And you have also ceased to put in a different basis of dockage charges some time in the latter part of 1936 or the first part of 1937, which resulted in increases against the vessel, have you not?

A. That is correct.

Q. And you have similarly done the same thing in the matter of service charges against the vessel, haven't you?



A. That is correct.

Q. And do you agree with me that, all the factors being equal, the individual users of your different services should pay in proportion to that use?

A. To a certain extent. I think we have to keep in mind too what will provide the greatest revenue, keeping in mind the public interest. I think there have been Commission decisions to the effect that sometimes reductions of rates are keeping the rates down provides greater revenue and are more in the public interest than increasing the rates.

Q. What has been the experience of the Port of Oakland [fol. 906] in keeping the rates down as to the volume of business handled?

A. I think we have tried to keep ourselves on a competitive basis, and our tonnage has increased from year to year. We attribute that to our facilities, service, and rates.

Q. Do you expect the tonnage to continue to increase now that you have increased the tolls and you have increased the service charges, and you have increased the dockage charges?

A. We have not upset our competitive relationship with the other operators. We all increase it by the same amount and at the same time.

Q. And, similarly, do you feel that if all your competitors adjusted their wharf demurrage basis of charges differently from what it is today, the same thing would hold true as has been your experience with these other charges?

A. We would have to take into consideration all our competitors.

Q. I have that in mind.

A. That includes competitors and points of shipment, not just competitors located in the Bay area.

Q. But do you have in mind there some private warehouse or facility of a shipper?

A. Well, I recall, for instance, on coastwise traffic, that storage is welcomed at the northern ports. Shipments of paper and flour have been held in storage in the north [fol. 907] rather than ship them down here for storage, possibly shipping here in smaller quantities, on which I think if our rates were out of proportion with the rates at the point of shipment the goods would be held in storage at the point of shipment rather than at point of destination, we being the point of destination in this case.

Q. But, primarily, your competition is with your fellow terminal operators in San Francisco Bay and probably Stockton, is it not?

A. In general, yes.

Q. Do you compete with Stockton in the handling of flour inbound from the northern mills?

A. Oh, I don't think so, I think the flour that we get is consumed more within the Bay area. I don't think that we are particularly competitive.

Q. And, therefore, you have had no concern with Stockton's 15 day free time on flour as compared with your ten days free time on flour?

A. It hasn't disturbed us any.

Q. Isn't that true with all the other wharf demurrage commodities that you and your competitors handle in San Francisco Bay?

A. I think we are more concerned with some of the commodities, particularly outbound canned goods and dried fruit, and so forth.

[fol. 908] Q. What is your particular competition on canned goods?

A. Well, we have found that even one of our lessees, who is under the lease obligated to route his cargo through the Outer Terminal provided the costs are no greater than through other facilities, has used the Port of Stockton in preference to the Outer Harbor Terminal, due to lower costs.

Q. You are referring to the Inland Transportation costs, are you not, instead of these wharf demurrage costs?

A. No, at one time they had three-quarters of a cent a day and that was specifically called to our attention, as compared with our  $1\frac{1}{4}$  cents.

Q. That has not happened since Stockton put their demurrage rates on a parity with yours, has it?

A. That has not been called to our specific attention. However, we do know cargo is routed through the Port of Stockton. Taking a number of items into consideration, we have been told that if we don't let the spread get too far out of line, we might still be able to hold some of the tonnage over our facilities by reason of more frequent steamer sailings, better climatic conditions, and the fact that the shippers are located and the brokers are located in the Bay area.

A number of items have to be taken into consideration in addition to costs.

Q. But, as long as Stockton has the same rate as you, you would still have those advantages, as you call them, of more frequent steamship service and brokers and financial [fol. 909] houses, and so forth?

A. Yes, but we must keep in mind the lower land transportation rates from certain points of shipment to Stockton.

Q. Do you have in mind shrinking your wharf demurrage rates to offset the land transportation?

A. I don't say that we should have any lower rates than Stockton, but I contend they are competitors of ours in considering the item of wharf demurrage.

Q. I suppose Stockton thinks they are a competitor of yours too, and some of the business you are handling they would like to get, and you would engage in competition for the same tonnage and drive your charges that much lower, wouldn't you?

A. We have never driven them any lower. We have always been perfectly agreeable to sitting around the table and discussing rates with all our competitors, and we have always been willing to cooperate and go along with any rates that appear to be reasonable.

Q. Let us take the westbound trade; the inbound cargo ordinarily is the so-called low density balloon cargo that you get on your docks, general merchandise, is it not?

A. It costs more to handle inbound by water, yes.

Q. You handle a considerable amount of that type of cargo over your Grove Street Pier, don't you?

A. Quite a bit; not nearly as much as we would like to handle.

[fol. 910] Q. Have you noticed any particular difference in your costs between handling inbound cargo at Grove Street and your so-called high density cargoes at the Outer Harbor, which are principally canned goods and dried fruit outbound?

A. We have not made any study of costs, but I think it is safe to say at least that the costs are higher on inbound cargo as a general rule than on outbound. However, there are certain inbound commodities, such as these heavy rolls of paper and some canned goods and other commodities, that have good density.

Q. But you will agree with me, will you not, that on the inbound commodities, general merchandise, handled at your Grove Street pier, the 85.48 cents per ton indicated here for two tons of canned goods on hand for 60 days, is considerably more on the average for the handling of inbound general merchandise, will you not?

A. I wouldn't particularly agree with those figures, not having made a study of them, but I will agree that it costs more to handle inbound cargo than outbound.

Q. You will agree also that the handling of general merchandise, restricting it only to the floor space cost, with some very small increases for available and non-available overheads, plus checking, is materially greater on general merchandise than it is on the high density commodities?

A. I don't recall just how you put that question. May I [fol. 91] have it read, please?

(The question was thereupon read by the reporter as above recorded.)

The Witness: I will say on general merchandise as a whole, yes, excepting certain commodities.

Q. In connection with your reference to the small importance that wharf demurrage has in your terminal operations, could you give me any indication of what percentage wharf demurrage may bear to the sum total of your other terminal revenues, excluding all the non-terminal revenues in that answer; whether it is one-half of one per cent or 15 per cent of the over-all revenue derived exclusively from your terminal operations?

Mr. Jones: Mr. Differding, by non-terminal revenues do you mean the revenues received from the lessees?

Mr. Differding: Yes, non-terminal is lessees of property—

Mr. Jones: Lessees of property not connected with terminal facilities?

Mr. Differding: That is right.

A. I don't have that information available. We could determine the revenues, however, and give you that.

By Mr. Differding:

Q. Could you say it is approximately less than five per cent or less than two per cent?

A. I would rather get the actual figures.

[fol. 912] Q. You would not care to hazard a guess?

A. No, I wouldn't care to estimate right off hand.

Q. Now, you also mentioned public warehouse competition. What particular warehouse competition do you have in mind that would prevent you from making any material adjustment in your wharf demurrage charges?

A. I think warehouse competition on beans and in the Valley warehouses, particularly.

Q. I appreciate your reference to beans, but let us take some other commodity.

A. Well, on long time storage I believe the sugar warehouses have a pretty low rate.

Q. Now, let us take general merchandise. Have you ever checked the ordinary run of your general merchandise with your competitive public warehouses?

A. We figure that the spread between rail and water is quite small sometimes, particularly in the coastwise traffic, and to increase any of the terminal charges would very likely throw a considerable tonnage to the rail movement and it probably wouldn't go to the warehouses at all.

Q. What specific commodities do you have in mind on coastwise?

A. Not only on flour for one, where there is a very small spread, but I understand that the spread on a number of commodities is very small. The spread on sugar is very small.

[fol. 913] Q. And that would, in turn, divert the traffic from the water carriers to the rail lines if the increasing of your wharf demurrage charges would have that effect, would it not?

A. Yes. You understand, I don't want to leave the impression that we are trying to hold rates down any more than our competitors, but we have not been responsible, I don't believe, for holding these rates down. A short time ago we sat around the table and prepared some proposed rate changes upward, both on the daily basis and on the period basis, which would be optional. I don't want you to think that we are opposed to some increases in some of the wharf storage rates.

Q. Well, the way you have been increasing the other services, I imagine further increases would not be objectionable, but I had no particular reason for thinking you did or didn't want increases. I propose to ask the same

questions of other witnesses to follow you, but I would like to ask you one or two more questions and I am through.

Generally speaking, your facilities are substantially the same as those operated by Encinal Terminals, are they not?

A. I would say the facilities themselves are the same, but I think there are a lot of competitive factors that are in their favor as compared with ourselves.

Q. No, just the facilities, that is what I am interested in.

A. The facilities themselves? I would say ours are just [fol. 914] as good or possibly a little better, as far as construction is concerned.

Q. They are also comparable to the Golden Gate Terminal, particularly, in San Francisco, are they not?

A. Well, you mean the method of operation?

Q. The type of facility offered to the cargo shipper as well as the vessel operator.

A. I would say our facilities are probably better than theirs are.

Q. But they are modern facilities, they are wide, and have big truck aisles, and all that sort of thing?

A. That is correct.

Mr. Differding: I think that is all I have. Thank you, Mr. McCarl.

Cross-examination.

By Mr. Vaughan:

Q. Mr. McCarl, what kind or class of commodities do you consider under wharf demurrage at your terminals at Oakland?

A. I still prefer to use the term "storage" instead of "demurrage." That is the way we look upon it. These commodities that move by water, some of them, won't stand additional handling, both in the way of damage to packages and also expense. I think a number of shippers testified at previous hearings before the California Railroad Commission that if these goods were not stored on the [fol. 915] wharf properties, Terminal properties, that they would not move to uptown warehouses for storage.

Q. I don't think you understood my question, Mr. McCarl.

Mr. Vaughan: Would you read it, Mr. Reporter, please?



(The question was read by reporter as above recorded.)

A. The commodities that move in fairly large quantities. We try to make the minimum a carload.

Q. Will you describe some of the commodities?

A. Well, most any commodity that would move by water.

Q. In other words, would it be fair to say that you would store under wharf demurrage rates, or, as you would prefer to call it, wharf storage rates, any and all articles of commerce that move in and out of the Port of Oakland by vessel?

A. Unless the account was one of what we call distribution shipments; where the shipments would be too small to warrant storage in the transit sheds; and we have the option under our tariff of refusing to accept goods for storage unless we consider it advisable to do so.

Q. Wouldn't you say, generally speaking, that you are storing general merchandise at these terminals, as that term is generally known?

A. Well, I think there is a big distinction between the type of goods that are stored at the Port of Oakland facilities [fol. 916] ties and those stored in the warehouses. We have refused a number of accounts, we have even suggested that some of the warehouse operators communicate with these accounts to get them for warehouse storage rather than storage at the terminals.

Q. Mr. McCarl, of the total business handled by you, what percentage have you refused under those circumstances?

A. I wouldn't be able to say definitely because we have a number of solicitors that are contacting the public right along and I would not be in a position to say what is offered and what is not, but the type of storage that we handle is usually what we consider legitimate terminal storage accounts.

Q. It would not be over one-half of one per cent, would it, Mr. McCarl?

A. I see. I wouldn't be in position—the only ones I know that we refused are the ones that come to my particular attention.

Q. You employ solicitors, I gather, from your last answer?

A. That is correct.

Q. How many solicitors have you?

A. We have four outside all the time, sometimes five.

Q. Now, do those solicitors solicit business for your terminal upon the basis that they get a lower storage rate there than they would get at a public warehouse?

A. We don't use that as a rule in our solicitation.

[fol. 917] Q. It would all depend upon the length of storage, I think, and upon other conditions?

A. We don't use that as a soliciting factor.

Q. Have you ever used it as a soliciting factor?

A. Do you have in mind now outbound or inbound cargo, water movement?

Q. Either one?

A. I think we have used it in some cases; I think possibly more on inbound than outbound, because as a rule outbound cargo would not go to warehouses for storage.

Q. You have used it, have you not, as a factor of outbound business in connection with large accounts?

A. I don't have occasion to refer to the public warehouse to any extent that I know of.

Q. Have you ever advertised in any of your advertisements that there is an advantage to anyone using the Port of Oakland facilities because they can store there at a lower rate than would accrue at a public warehouse?

Mr. Jones: Mr. Examiner, I fail to see the relevancy of what the Port of Oakland uses as a ground for solicitation of business. Now, if counsel is inquiring whether we are in the warehouse business, possibly we are to a certain extent. We have the charter power to do it, as I understand it, and, as I understand it, the warehouse is not an issue before this Maritime Commission.

[fol. 918] Mr. Vaughan: Yes, but wharf demurrage is, and if, as the record will be developed probably, warehouse demurrage storage is being conducted at less than cost, surely such a practice as I have in mind of soliciting traffic on the advantage to the shipper that he can get goods stored at less than what he would have to pay at a public warehouse, whose rates are presumably just and reasonable, surely that is something that this Commission should take cognizance of and it is within the scope of the border of investigation.

Examiner Basham: I will overrule the objection.

A. On outbound cargo it is so evident that the cost of shipping direct to a terminal and saving the transfer ex-

pense—it is so evident that we don't have to use it in our solicitation. On inbound cargo—

By Mr. Vaughan:

Q. Will you please answer my question?

A. I am answering it.

Q. I asked you about advertising, Mr. McCarl.

A. I don't recall any advertising to that effect.

Q. Well, now, are you storing canned salmon at the present time for the Alaska Pacific Company at any of your terminals?

A. Alaska Salmon Company?

Q. Alaska Pacific Salmon Company.

A. I don't recall that,—probably that is it; Alaska Salmon Company is the one I mean.

[fol. 919] Q. Alaska Salmon Company? It is canned salmon?

A. Yes.

Q. And is it not a fact that you took that away from a public warehouseman on the basis that they would get a lower storage charge at the Port of Oakland facilities than what they were paying at the public warehouse?

Mr. Jones: What has that got to do with this examination?

Mr. Vaughan: May it please your Honor, if in fact the storage rate of the Port of Oakland is non-compensatory, it is quite pertinent to the inquiry. It is an unfair practice for any terminal, public or private, to solicit business on the basis that something less than cost will be offered, whether it is less than cost or free service.

Mr. Jones: There is no showing that it is less than cost.

Mr. Vaughan: Perhaps that will be developed if the Port of Oakland costs can be ascertained, and I trust that before this proceeding is concluded we will have some evidence in the record, despite the refusal of the Port of Oakland to submit it. I don't think this proceeding is by any means over, but I submit that I have the right to develop this, based upon our contention that the Port of Oakland is not charging compensatory demurrage rates, or, as they term them, wharf storage rates.

[fol. 920] Examiner Basham: Objection overruled.

A. We have solicited those salmon accounts for quite a number of years, and we had considerable difficulty in get-

ting any of the business. A number of years ago some salmon was stored at Oakland but more recently it was stored at San Francisco. We had all bid for that tonnage and lost it to San Francisco, to the State Terminal, I understand. The following year we again solicited it but made no reduction in our rates whatever. We called attention to certain trans-shipment features, and our service and our facilities, and it is my understanding that the shipper was not particularly satisfied with the arrangements and the service which he had obtained at the State Terminal Company, and we then secured the business from our competitor, the State Terminal Company.

By Mr. Vaughan:

Q. Mr. McCarl, do you assess any handling charges in connection with goods which you store under wharf demurrage, or, as you prefer to call it, wharf storage?

A. No, sir, we do not.

Q. And have you ever solicited business under wharf demurrage, or under, as you term it, wharf storage, upon the basis that the shipper will not have to pay handling charges at your facilities, but as he must pay such charges at public warehouses?

A. We quote all of our rates; we do not figure that that [fol. 921] type of movement should be stored in public warehouses. It moves by water and we don't see why it should be transferred away from the terminal to an uptown warehouse and stored and then be transferred and pay charges—

Examiner Basham: Are you answering the question? Read the question. I don't think you understood it.

(Question read by reporter as above recorded.)

The Witness: We don't solicit it, not just that way. We don't call attention to the difference in the handling charges of the warehouses and our facilities.

By Mr. Vaughan:

Q. Mr. McCarl, have you ever solicited business on the basis that at your facilities a handling charge is not required to be paid, whereas such a charge accrues at a public warehouse? Now, can you answer that yes or no, and give any explanation you may please?

A. If you just want yes or no, I will say "No." We don't put it just that way.

Q. Well, have you ever, in connection with solicitation, referred to the fact that handling charges are not paid at your facilities, whereas they must be paid at public warehouses?

A. I don't think that is our real competition, the public warehouse.

Q. Well, have you ever done that now? Will you answer the question?

[fol. 922] A. Not to my knowledge. I will say "No."

Q. How long normally do commodities remain in storage under your wharf demurrage rates, or, as you term them, your wharf storage rates?

A. All the way from one day to possibly in extreme cases several months, possibly a year, if the goods are not sold.

Q. Have you ever allowed goods to be held under those rates for a longer period of time, such as a year and a half?

A. I wouldn't say we have not in the years gone by; not recently, I don't believe.

Q. On what terminal do you store flour?

A. Unfortunately, we don't get much more flour. There is some stored at the Ninth Avenue terminal, handled by McCormick.

Q. How long have lots of flour remained in storage? What is the maximum period of time to your knowledge that lots of flour have remained in storage on your terminal facilities?

A. It is my understanding that the turn-over on what we used to have was about 20 days.

Q. How about beans? How long has a particular lot of beans remained in storage at your facilities?

A. Well, we had one lot, I recall, for a couple of years.

Q. In connection with any storage services performed under your wharf demurrage rates, are receipts issued?

[fol. 923] A. We issue receipts, yes.

Q. Are those in the form of warehouse receipts?

A. We issue both negotiable and non-negotiable warehouse receipts.

Q. And are those receipts used as collateral for bank loans?

A. It is my understanding that they are.

Q. In that connection have you complied with the provisions of the California Uniform Warehouse Receipts Act?

Mr. Jones: Just a moment before you answer that question. There is no requirement in that act that any public body conform to that provision, and these receipts are issued under the authority of the city Charter, Subdivision 9 of Section 212.

Mr. Vaughan: He can answer whether he has or not. That is a legal question.

Mr. Jones: You are asking for a legal conclusion, if he has complied with the State Law.

Mr. Vaughan: I am asking if he has complied. If he says he doesn't, let him answer that. You and I may differ as to whether or not the Uniform Receipts Act does embrace public bodies who are engaged in the warehouse business. May I submit the question?

A. We have our legal department, and we take it for granted it is legal, otherwise that form would not have been approved by the Legal department.

[fol. 924] By Mr. Vaughan:

Q. Then you have not complied? Is that the answer?

Mr. Jones: That is not the answer.

A. I don't know.

By Mr. Vaughan:

Q. Have you been handling any cleaning and scouring compounds for the Hygienic Products Company at any of your warehouses?

A. Not to my knowledge under that name. It is possible.

Q. Do you know whether or not those commodities were diverted from any public warehouses?

A. Not upon our solicitation that I know anything about.

Q. Are you storing any molasses or syrup for Pennick & Ford at any of your terminals?

A. We have stored some, I don't recall whether we have had any recently.

Q. Do you know whether or not that particular account at the time you store it, was diverted from a public warehouse?

A. Not at our solicitation.

Q. Have you stored or are you storing any shortening or cooking oil for the Wesson Oil & Concentrate Sales Company?



A. I recall the name. I know we have handled some of their products. I don't recall whether there are any in storage. I wouldn't be surprised if there were.

Q. Do you know whether or not that business was taken [fol. 925] away from any public warehouse?

A. I don't know.

Q. What would your testimony be with respect to Linden Chicken?

A. The answer would be the same.

Q. Noodles for the Washington Egg & Poultry Association?

A. We have stored some, I know, for that account. They move by water and they don't all move out within ten days so there has been some storage.

Q. What would your testimony be with respect to news print rolls for the Oakland Enquirer?

A. We store a lot of that at times, I wouldn't say so much for the Enquirer, but I know we handle some of their paper.

Q. Do you know whether or not they took that business away from a public warehouse, that is, the storage business?

A. A number of years ago when there might not have been ample terminal facilities the warehouse might have handled it, but I don't know that we took it away from a warehouse. It has been handled at terminals for a number of years.

Q. How about French's mustard and birdseed for the Atlantic Sales Corporation?

A. I don't know. I know we don't solicit those small accounts. If they are storing it is just in conjunction with transit movement.

Q. Do you permit rail cars of Idaho flour to be stored [fol. 926] for consolidation with Northwest flour for inland points or local pickup?

A. We have accepted some few shipments of flour by rail. That practice was started by one of our competitors a number of years ago, and then when we received flour by water for storage it was called to our attention that it was necessary for these shippers to consolidate different brands and qualities of flour in making delivery, and that some of this hard wheat flour that came in by rail should be stored at the same location with the other flour to facilitate delivery to the customers, so we have stored some.

Q. Then the answer is "Yes?"

A. To a limited extent, yes.

Q. Now, at this warehouse C, which I understand is located on your Outer Harbor Terminal—

A. Yes.

Q.—you assess a warehouse charge, do you not, of three cents per square foot per month plus a 60 cents per ton handling charge?

A. We have used that in a few cases. That rate, likewise, was put in to meet competition.

Q. Well, now, what competition have you in mind?

A. With one of the other terminal operators.

Q. Which one?

A. I believe Howard Terminal. I don't know whether [fol. 927] anybody else had it or not, but I know Howard Terminal had it.

Q. In connection with that particular rate and handling charge, that storage rate or handling charge, does that include piling in warehouse C?

A. On inbound water movement that is transferred to the warehouse and includes piling. In the reverse direction we make an extra charge for high piling in conjunction with the car unloading.

Q. When you take it out of warehouse C back to the transit shed, do you assess another 60 cents handling charge?

A. Yes.

Q. But no piling charge?

A. I say, the only piling charge we do assess is in conjunction with the car unloading.

Q. Now, have you made any studies to determine whether or not that warehouse storage charge at warehouse C of 3 cents per square foot a month actually results in lower or higher revenue than if you stored that same cargo at your warehouse demurrage rate of 11 cents per ton per day?

A. It depends entirely on the length of time it remains in storage.

Q. What studies have you made?

A. It depends on the length of time. I think in general anything over six months at space rental basis would probably be lower than the per day basis.

[fol. 928] Q. Does the 3 cents per square foot rate apply only on the space actually employed? In other words, do you give allowance for aisle space?

A. We add 20 to 25 per cent, it is either 20 or 25 per cent. We use it so seldom it is a little hazy in my mind, but it is one or the other.

Q. Who determines what is to be high piled?

A. The terminal force, as a rule, although the traffic department—they confer with the traffic department as to what the prospects are for tonnage, so as to determine what the space requirements will be.

Q. Doesn't the shipper ever dictate how high it will be piled?

A. He never has anything to do with it except on the space basis.

Q. I am talking about the space basis.

A. The shipper would be interested in the space basis, but I might say that those accounts are very limited, one or two at the most.

Q. Even though limited, when they ask you to pile it at a certain height, don't you usually follow their request?

A. Yes; I would say when goods are stored on the space basis, knowing that they are going to remain in storage for long periods of time, they are high piled.

Q. How high are they piled?

[fol. 929] A. Oh, we pile some, I believe, 22 cases high, which is as high as the lower floor will stand. That is up to the ceiling.

Q. Is there any minimum space requirements under that 3 cents per foot rate?

A. There is, so far as our accepting it is concerned. We would not accept small accounts on that basis.

Q. What is the minimum?

A. We haven't any definite minimum.

Q. Does it vary as to the account?

A. I say, we have one account, so it does not vary much.

Q. Now, let us take an instance of canned goods; what would your charge be, if any, for delivering a lot of canned goods received on wharf demurage, when withdrawn or shipped in quantities of from one to five cases per delivery?

A. Again, if the account is of the peddling nature we refuse to accept it on storage. We might possibly get some account that moved by water before we became aware of the fact that it is what we call a peddling or distribution account. We may have had some of that type of storage, but we don't encourage it, and we don't permit it to continue.

Q. Mr. McCarl, I am not interested and I didn't ask you

about the accounts you did not get. I am talking about the accounts you have on storage. Now, will you please answer my question, having in mind that it is only where you have an account in storage, do you assess that charge for delivery [fol. 930] of the small lots?

A. We assess no charge whatever for partial deliveries.

Q. Now, what would your charge for the same transaction be when the Port of Oakland is required to prepare a bill of lading to effect the shipment?

A. It is in very exceptional cases that we prepare the bills of lading. We have the bills of lading prepared by the transportation companies.

Q. Now, when you do prepare it, Mr. McCarl, do you assess the charge?

A. Well, I think it would be safe to say we do not prepare them.

Mr. Scoll: Do you want to ask him further about that?

Mr. Vaughan: I do, but go ahead.

Mr. Scoll: I just wondered if you were through.

Mr. Vaughan: I am not sure that I understand his answer.

By Mr. Vaughan:

Q. Have you and do you prepare bills of lading?

A. If we prepare any there is no charge. There is no provision for any charge and there wouldn't be any charge.

Mr. Vaughan: Did you want to ask a question on that?

Mr. Scoll: No, I just wanted to have him clarify his [fol. 931] answer.

By Mr. Vaughan:

Q. Do you ever advise a storer of a withdrawal of merchandise from wharf storage?

A. Yes.

Q. Do you make a charge for that?

A. No.

Q. Do you ever effect any C.O.D. collections for your storers when they request you to do so, and if so what charge do you make for that service?

A. Oh, we have in the past made some collections. I think we instructed our terminal superintendents to refuse that type of business. I don't know of any now that we have that we make any collections for.

Q. Did you ever make any charge for it?

A. No charge; therefore we refused to handle it.

Q. Now, if a quantity of merchandise is stored under wharf demurrage under which the inbound carrier's billing shows no segregation as to sizes, brands, grades, or varieties—that is, we will say paper bags, for example—will you accept storer's delivery instructions for one or more sizes, brands, grades, or varieties without making a charge?

A. Goods are supposed to be segregated at the time of discharge from the vessel and there is no charge assessed. We don't have much of that service to perform. They are [fol. 932] segregated at the time of placing on the dock.

Q. Yes. You may not have much, but when you do, you do not make any charge, is that true?

A. If there is any service performed of that kind there is no charge.

Q. If merchandise is received in the transit sheds from a vessel without prior knowledge of storage requirements, and the owner will declare an intention to permit the goods to remain on wharf demurrage for a considerable period of time, is it your practice to remove the goods from the transit shed to a less congested area in your facilities?

A. All we have is the transit shed on inbound cargo. There is no place to move it.

Q. How about some of these back warehouses?

A. On inbound cargo we have no back warehouses, except the pineapple which I have always mentioned as an exception.

Q. If a storer maintains a large variety of merchandise on wharf demurrage, that is, we will take again paper bags, various sizes of paper bags of different grades and sizes of wrapping paper, do you maintain a record of receipts and deliveries by the individual items?

A. We maintain a record of receipts and deliveries. I presume that is by varieties if it is required by the owner. I don't know about that detail, whether it is required.

Q. Well, have you—

A. We keep whatever is necessary to make deliveries and [fol. 933] to give the information that the owner requires.

Q. How accurately do you keep those records of deliveries, Mr. McCarl?

A. We keep whatever is required, and if it is too much of a detail we refuse to handle any other shipments.

Q. Do you know of any instance where your records did not show a withdrawal and it turned out that there had been a withdrawal, and in such instances have you assumed liability for the loss?

A. I handle all the claims and I don't know of any liability for any such loss. We never paid any claims.

Q. Mr. McCarl, I am not quite sure that I understand your testimony, particularly where in several instances you have referred to the willingness of the Port of Oakland to cooperate in connection with the level of wharf demurrage rates. Is it true that the Port of Oakland, through yourself, has in the past initiated conferences among your competitors for the purpose of trying to reach a satisfactory agreement as to the level of the wharf demurrage rates?

A. We have initiated conferences in connection with all terminal rates.

Q. Well, at those conferences have you indicated as the position of the Board of Oakland that you would be willing to increase the wharf demurrage rates?

A. Where it appeared to be in order, yes, we have expressed [fol. 934] the willingness if the rest do.

Q. As a matter of fact, based upon your experience in the past five or six years in connection with this wharf demurrage problem, don't you recognize that one of the chief sources of chaos existing among the terminals as to their competition is because of the feeling that wharf demurrage rates are too low?

A. You say chaotic conditions amongst the terminal companies?

Q. And the public and the warehouse men. We will throw them all in.

A. Well, I will have to say again that I think in general we are not particularly competitive with the warehouses. It is a different type of storage.

Q. Then leave them out, if you can answer my question without the warehousemen.

A. I don't think there is any chaotic condition amongst the terminal operators who have sat down and discussed the matters of rates for the various services. We did have tariffs on file and the rates are stabilized and we are not responsible for unreasonably low rates if they are low.

Q. If it were the desire of all other terminal companies to cooperate and enter into an agreement whereby wharf



demurrage rates would be increased, do you believe that the Port of Oakland would go along with those operators?

Examiner Basham: I don't see the relevancy of those [fol. 935] questions, Mr. Vaughan.

Mr. Vaughan: Very well, your Honor.

By Mr. Vaughan:

Q. You stated that you had given no consideration to the cost of wharf demurrage, Mr. McCarl?

A. We have never made any study as to the cost.

Q. I draw attention to the statement that you made when you read your letter of March 23, 1936 to Dr. Edwards as follows:

"Should the goods remain on the space on which they have been placed for transit movement, one, two, three or four days beyond the free time period, there is no additional labor expense whatever as the space is generally not actually required for the handling of new cargo."

Now, in connection with that conclusion, is that based upon surmise on your part, or upon some study that you have made?

A. From actual conditions over a period of some 25 or 30 years I have drawn that conclusion.

Mr. Vaughan: That is all.

Mr. Townsend: I have some questions I want to ask.

By Mr. Townsend:

Q. Mr. McCarl, I want to follow up, if I may, this question of your competition in connection with storage on the wharf. [fol. 936] I believe you just stated a moment ago that in your opinion your competition was not so much with the public warehouses. Now, you have also referred to the storage of salmon, and let us start with the storage of salmon. Isn't it true that salmon is sometimes stored in vessels that are anchored in the estuary or San Francisco Bay?

A. Yes, that is true.

Q. Can you describe the nature of that particular storage?

A. Well, I believe there are at least three salmon concerns that do business in the bay area that have stored salmon in the vessels tied up at different points in the bay

district, either in the estuary or in the bay, and the goods are held in the ship until it is necessary to unload them.

Q. Well, now, who is owning and operating those vessels in connection with the salmon storage?

A. The owners of the salmon.

Q. Is there in effect not field warehousing being practiced on board those boats with the issuance of warehouse receipts, and so forth?

A. I am not sure as to that. It has not come to my attention.

Q. In connection with the storage of salmon on your docks, are you competing with those vessels to which you have referred?

[fol. 937] A. Well, we don't try to meet that type of competition. They have the vessels, and just what it costs them to hold the salmon in storage in the vessels must be a very small expense. We figure that our competition begins when they decide to unload the salmon.

Q. Referring now to other commodities, what do you consider to be your real competition in connection with storage on your docks?

A. The competition is with the other terminal operators, with interior warehouses to some extent, with facilities at the points of production, at the plants, and also facilities at the points of shipment, having in mind coastwise traffic in that connection.

Q. Is it not a fact that the owner of any goods who is looking for space in which to store them will investigate the entire situation and take the cheapest storage that he can find that will suit his needs?

A. Yes; I believe he will also consider climatic conditions sometimes. There are a number of items that enter into the competitive factor. The cost is the principal factor, I believe.

Q. Have you ever found that the owner of goods seeking storage space may even investigate the possibility of leasing a vacant building in Oakland and storing in such vacant building?

[fol. 938] A. We have had one of our large lessees, in part, that is, utilize that type of storage in preference to our space rental basis and also the wharf storage rate.

Q. Would you say that you are really in competition with storage space of that type?

A. We don't particularly try to meet that type of competition, but that has cost us considerable tonnage.

Q. Have you ever found that the owner of the goods, if he considers that your wharf demurrage rates are too high, may erect his own building for storage purposes?

A. Yes, that was forcibly brought to our attention too by another of our large lessees.

Q. So, summarizing briefly, would you say that in addition to public warehousing at various points, whether it is the country of origin or destination, and the other competing terminals, you must also take into consideration what we might call proprietary warehousing, that is, owned by an individual?

A. Yes.

Q. Would the Port of Oakland accept for wharf demurrage on its docks canned goods that are still in the cans and not labeled or in cases?

A. No, we would not.

Q. Why not?

A. We don't consider that proper terminal storage.

Q. Why?

[fol. 939] A. The question of pilferage enters into it. It just doesn't lend itself to transit shed storage.

Q. And as far as the Port of Oakland is concerned, that could only go in special leased areas?

A. Yes.

Q. Does the Port of Oakland ever have an occasion when a vessel engaged in trade between the Pacific Coast and Europe has been scheduled to call at Oakland but fails to call there?

A. Scheduled to call at Oakland and fails to call?

Q. Yes.

A. There have been instances, yes.

Mr. Graham: What do you mean by that, scheduled by the carrier, or scheduled by the Port of Oakland?

Mr. Townsend: Let me develop it a little more fully and I think it will be clear.

By Mr. Townsend:

Q. What I have in mind is this, Mr. McCarl: Doesn't it sometimes happen that the Port of Oakland has solicited cargo for a particular vessel in the European trade, and

that vessel fails to call at Oakland and the goods remain on the dock at the Port of Oakland?

A. Generally there is one call made in the East Bay area, although it might be possible that they do not call in the East Bay area at all. But we have had a number of in-[fol. 940] stances where we have solicited cargo for a particular vessel, guaranteeing a 150 ton minimum for the calling of that vessel, and we have not had that minimum and the vessel did not call.

Q. But you have had some cargo on your docks for that vessel?

A. Yes.

Q. In those instances where the European vessel has not called at your dock, what has been done with the cargo on your dock intended for that vessel?

A. We have transferred it to another East Bay terminal or to San Francisco.

Q. What method of transportation is used in making that transfer?

A. Truck in so far as the other East Bay Terminals are concerned, and by barge to San Francisco.

Q. Who pays the charge in connection with that transfer?

A. If we don't have a 150 ton minimum the Port of Oakland pays it. That situation likewise pertains to the other terminal operators.

Q. Isn't that situation the same if the vessel fails to call at Oakland, regardless of the amount of tonnage that you have?

A. If we have our minimum and there is any transfer, then it is for the account of the carrier.

Q. The carrier pays the transfer charges?

A. Yes.

[fol. 941] Q. Doesn't the Pacific Coast European Conference tariff provide that the European carriers will not absorb any transshipment costs?

A. I understand that for certain operating conveniences of the vessel permission is granted to do that. It is not done to any great extent. They pretty nearly always call the vessel.

Q. You say permission is granted. By whom is permission granted?

A. I presume the conference. I wouldn't say definitely as to that. I know there have been over a number of years some transfers that we have not paid for.

Mr. Scoll: Mr. Townsend, how is this relevant to the wharf demurrage issue, may I ask?

Mr. Townsend: I don't understand that we are limited in this proceeding to talking about wharf demurrage. I want to ask this witness some questions about his operations. I understand Mr. Differding has gone down the line on it.

Mr. Graham: Haven't you started it when you asked him about the practices of the European carriers?

Mr. Townsend: I will ask another question.

By Mr. Townsend:

Q. Mr. McCarl, is there a provision in the tariff of the Port of Oakland which provides for the absorption by the [fol. 942] Port of Oakland of barging or trucking transportation costs for transferring this cargo of a European vessel which fails to call at the Port of Oakland?

A. We, like the other terminal operators, have considered that an operating absorption. It is our inability to obtain sufficient tonnage to make the minimum, and therefore the shippers cannot be assessed the charge and we consider that an operating matter, in that we have to, in such instances, get the cargo to the vessel.

Q. What is the answer to my question?

A. There is nothing in the tariff. We don't consider it—it is an operating expense.

Q. Now, let us refer for a moment to cargo which is outbound from the Port of Oakland to an intercoastal destination and which is transshipped from the Port of Oakland to San Francisco and there put aboard an ocean-going vessel. What toll is assessed by the Port of Oakland?

A. The intercoastal toll at the present time. The old practice was to assess an inland waterways toll, figuring that it was an inland waterway movement. That practice obtained for quite a number of years, but at the present time we are assessing the intercoastal toll.

Q. When was the change in practice made?

A. When the increased tolls went into effect. That was the first change in the toll item since the Port of Oakland [fol. 943] operated its facilities, and the matter had been discussed a number of times, and this was the opportunity

to put it into effect, and I, for one, practically insisted upon it being interpreted that way, and since that time we are all assessing the intercoastal toll.

Q. And that change was made in December, 1939, was it?

A. Yes, December 1, 1939.

Q. At the present time, then, as I understand it, in the case of this trans-shipped cargo, the Port of Oakland would assess the intercoastal toll, which is 25 cents, is it?

A. Right.

Q. Then the Port of San Francisco would also assess a toll, would it not, for the trans-shipment over the dock?

A. Yes.

Q. And is it your understanding that that would also pay the 25 cents?

A. That is my understanding, yes.

Q. Now, is it also your understanding that one of these toll charges of 25 cents is assessed against the cargo and the other is paid by the steamship company?

A. That is correct.

Q. Formerly the practice was that the tolls the Port of Oakland assessed for passing over its dock was the inland waterways toll of 5 cents a ton, and at San Francisco the intercoastal toll of 15 cents a ton was charged? Was that [fol. 944] then your understanding?

A. That is my understanding.

Q. Then was it also your understanding that formerly the cargo was charged 15 cents and the steamship company was only required to pay the 5 cent toll?

A. That is my understanding, yes.

Q. Does the Port of Oakland handle pool cars for water movement?

A. We do not.

Q. Why not?

A. We don't figure that that is proper terminal service, particularly in so far as the Port of Oakland is concerned. That is our view in the matter.

Q. You are just not interested in handling them?

A. No.

Q. Does the Port of Oakland handle consolidated cars moving by water and by that I mean a car having more than one consignor and one consignee?

A. Not to my knowledge. I think it is just one in each case.



Q. Does the Port of Oakland handle consolidated or pool rail cars?

A. I don't know just what would be the proper term for the type of cars that we handle. For instance, that is, the owner of the Pineapple stored at the terminal, will accept [fol. 945] consignments from other shippers to go into that car and we will receive them and perform the car loading, and the car goes forward under a bill of lading with one shipper. But we don't arrange for the consolidation, we simply load the goods into the car. We do, in the case of such type of traffic, assess what we call a freight transfer service charge on the goods that we receive and on which no water movement is involved.

Q. I am not sure whether you have explained what the interpretation of the Port of Oakland is with respect to that provision of the tariff concerning what we might call a waiver of wharf demurrage charges in connection with a delayed vessel. Have you discussed that?

Mr. Jones: I think it is quite complete in the record.

Mr. Differding: I went into that question completely.

Mr. Townsend: I was not sure.

By Mr. Townsend:

Q. Now will you consider for a moment the matter of the service charges at the Port of Oakland? There are different service charges for different things, are there not?

A. Yes.

Q. Now, how do you justify the difference in the charges in the different trades?

[fol. 946] Those charges have been built up over a period of years, I think probably based more on what the traffic will bear than on any other process, although the Railroad Commission made a cost study as per these exhibits which have been offered, I think back in 1935-1936, a study was made, and some adjustments were made based upon those cost studies.

Q. Is there any real difference in the service that is performed, for example, on outbound shipments in the different trades?

A. I don't think there is any particular difference. It may be that they move larger quantities in some trade routes than others.

Q. Would your answer be the same with respect to the inbound shipments in the different trades?

Mr. Jones: Mr. Examiner, are we going to go through the Oakland tariff item by item? In other words, it looks to me as though this is becoming now a fishing expedition for information that does not seem to have very much relevancy. If you have some point that you are leading up to, Mr. Townsend, I would be willing to consider it, but it is getting late and the hearing has gone on long enough anyway.

Mr. Townsend: Mr. Jones, I am simply trying to assist the Maritime Commission in developing the practices they are inquiring into.

Q. Let me ask another question, Was there an objection?

[fol. 947] Mr. Jones: There was an objection.

Mr. Townsend: I will submit the objection.

Examiner Basham: I am in sympathy with the objector but I will overrule him.

A. I think there is a little different situation on the inbound foreign shipments. They usually come in in larger quantities. I don't believe there is as much detail on deliveries as there is in the Intercoastal and coastwise traffic.

By Mr. Townsend:

Q. At what points under the jurisdiction of the Port of Oakland is inbound lumber discharged?

A. Principally at Ninth Avenue Terminal, Livingston and Dennison Street Piers; to some extent at the Outer Harbor Terminal; a small quantity at the Grove Street Terminal; and also at certain leased facilities at lumber companies.

Q. Is wharf demurrage charged on that lumber by the Port of Oakland at each of those facilities that you have mentioned?

A. When lumber remains on hand over the free time period the storage charge is assessed.

Q. And that is true with respect to all those facilities, including the leased area?

A. The only one that is questionable in my mind is the one of the Hogan Lumber Company.

[fol. 948] Mr. Jones: That is entirely private.

The Witness: That is entirely private. I would say in general, yes.

By Mr. Townsend:

Q. Well, now, do you mean that you charge wharf demurrage at all the wharf facilities except the one you mentioned?

A. That is a private facility so it would not come under our direction.

Mr. Jones: I think I can straighten that out.

Mr. Townsend: All right.

Mr. Jones: Those facilities which are leased to private businesses we do not charge any demurrage. After all, they are paying us rent for the facility. We do, at the docks.

By Mr. Townsend:

Q. As I understand it, then, at Ninth Avenue Dock, Outer Harbor, Grove Street Terminal, and at Livingston and—whatever it was—you do charge wharf demurrage on lumber held beyond the free time?

A. Yes, at all the facilities operated by the Port of Oakland, and that includes lumber for the Coos Bay Lumber Company and for Hill & Morton. Any lumber that moves over the facilities which are operated directly by the Port is assessed the storage charges in accordance with the port's tariff.

Q. Where is the lumber of the Coos Bay Lumber Company discharged?

[fol. 949] A. Ninth Avenue Terminal.

Q. And they pay wharfage demurrage on that when it is held beyond the free time?

A. They do.

Q. To the Port of Oakland?

A. Yes.

Q. Is that the regular charge in your tariff?

A. The regular rate to everybody.

Q. Is any lumber stored in Oakland areas of the Port of Oakland?

A. Yes, any lumber that is stored is in the Oakland areas.

Q. You do not store it in the transit sheds?

A. No.

Q. And this wharf demurrage charge to which you were just referring is applied in those open areas?

A. That is correct, and that is a high charge, too, by the way.

Q. Is any of that lumber that is discharged at any of those facilities that you have enumerated sent back after it is first placed on the dock?

A. At the Ninth Avenue Terminal, yes.

Q. Is a charge made for that service?

A. Yes.

Q. And is that service performed by the Port of Oakland?

[fol. 950] A. Yes, except in the case of the Coos Bay Lumber Company. They bring in full cargo lots and remove their lumber to their leased area with their own carriers. That same privilege would be extended to any other lessees.

Q. In other words, anyone who had his own lumber carrier would be permitted to set back the lumber and would not pay a charge therefor to the Port of Oakland?

A. That is right. However, the Coos Bay Lumber Company is the only one that is doing that for its own account. It is not practical in the case of small shipments.

Q. Does the Port of Oakland store any other commodities in addition to lumber in the Oakland areas?

A. Yes, some commodities.

Q. What are they?

A. Pipe, scrap iron—those are the principal commodities that I recall right off hand.

Q. Are those commodities stored in the open areas on a wharf demurrage charge?

A. Yes.

Q. And that is the regular tariff charge?

A. Correct.

Q. Does the Port of Oakland allow any other persons to perform service on its docks?

A. It will permit owners or their representatives, if they so desire, to perform accessorial service, including [fol. 951] marking, strapping, weighing, and labeling.

Q. Car loading or unloading?

A. No car loading or unloading. We consider that a major service and not an accessorial service.

Q. Does the Port of Oakland make a charge to the users of space for performing these services that you have mentioned?

A. We do not; none of the Terminal operators do. That is something that is under consideration by the company.

Q. And you make no charge, then, either for use of space by those people or anything in the nature of a service charge?

A. No.

Q. Now, why is no charge made?

A. Well, that is a practice that was built up before the Port of Oakland started operating, and we simply followed the practice that was established. It has never been changed. In San Francisco they even permit proper parties to perform the car loading and car unloading services.

Q. Without any charge being made?

A. Without any charge.

Q. Now, let us consider for a moment the situation of Libby, McNeil & Libby and Rosenberg Brothers. As I understand it, they have facilities that are leased to them behind the transit shed, is that correct?

A. That is correct.

[fol. 952] Q. And cargo moving to and from those leased services over the docks is first, if it is outbound, transferred from those leased facilities to the dock and there placed on a pile on the dock, is that right?

A. It either comes direct from the other plants, or if it is placed in those leased facilities the goods are transferred by the shipper or their agents to the transit sheds where we receive them.

Q. What method of transportation is used in making that transfer from the leased warehouse to the transit shed?

A. A small tractor and trailer.

Q. What type of facility is crossed between the leased area and the transit shed? Is that part of the Port of Oakland facility?

A. It is a paved area belonging to the Port of Oakland.

Q. Roadway area?

A. Roadway area.

Q. That is done either by the shipper directly or by some agent of the shipper?

A. That is correct.

Q. When you say "agent," you mean someone who contracts with them to perform that?

A. That is correct.

Q. Does the Port of Oakland receive any revenue in connection with that transfer?

[fol. 953] A. No, we perform no service and receive no revenue.

Q. What was the charge of 60 cents a ton that you referred to as a handling charge in your previous testimony?

A. That is a transfer charge between Terminal Building C which is not a leased facility, and the transfer shed; when the transfer service is performed by the Port of Oakland in connection with goods stored in Terminal Building C on a space rental basis.

Q. Now, just one or two more questions: You referred to the handling of flour over the docks of the Port of Oakland, and I believe you referred to the fact that the one thing you would rather have to consider in connection with your storage charge on flour is the all-rail competition between the northwest and California, is that correct?

A. Yes, I understand that is very bitter competition.

Q. Is it not a fact that the railroads reduced the rates from the northwest to San Joaquin valley not long ago?

A. That is my understanding, that they did.

Q. Did you find that that caused any loss in the flour business to the Port of Oakland?

A. We didn't have a great deal right about that time, but that has diminished to practically nothing now, so I would attribute the loss probably to that reduction.

Q. And is the level of the rail rates from the northwest to California a factor that must be considered in determining [fol. 954] the storage charges on flour, in your opinion?

A. Yes, it must.

Q. Are there any other commodities which you can enumerate where you have similar railroad competition?

A. Oh, I think that exists in the case of most commodities that move coastwise at the present time. The traffic moving by water in the coastwise trade has diminished to a very great extent in recent years. It has been lost to land carriers, so that I think we have to consider that land competition with the water transportation—we have to consider all the terminal charges in determining whether or not the goods will move by water or move over the terminals.

Q. Is that competition particularly noticeable in the case of lumber?

A. Yes.

Mr. Townsend: That is all, thank you.



Mr. Vaughan: I would like to ask one question that has been suggested by Mr. Townsend's examination.

By Mr. Vaughan:

Q. Mr. McCarl, in connection with that transfer from Libby, McNeil & Libby and Rosenberg Brothers storage space to the dock, you stated it was performed by the storer or the storer's agent?

A. Yes.

Q. Now, isn't it true that at a building adjacent to that [fol. 955] occupied by Rosenberg Brothers and Libby, McNeil & Libby, there is a storer of beans?

A. Yes.

Q. And that storer of beans occupies that space under a term rental basis, does he not?

A. Month to month basis.

Q. Month to month?

A. Yes.

Q. And he is not storing those beans under your wharf demurrage rates, or, as you term it, your wharf storage rates?

A. They are in his custody. He accepts them and cleans them and while they are in his custody he pays us for the space occupied and he assesses a charge of his own against the owner.

Q. And he does not pay either your 3 cents per square foot charge or your 1¼ cents per ton, does he?

A. He pays us the 3 cents charge which is named in the tariff.

Q. Oh, he does pay it?

A. Oh, yes.

Q. He doesn't pay a monthly rental?

A. He pays this 3 cents per ton per month. That is his monthly charge.

Mr. Vaughan: I see. Thank you.

Mr. Graham: Mr. Examiner, I have some questions of this witness, but in view of the fact that by my watch it is [fols. 956-961] four minutes of ten, I make a motion we adjourn for the evening.

Examiner Basham: We will now adjourn until 9:30 o'clock in the morning.

(Whereupon at 10:00 p. m. the hearing was recessed until February 20, 1940, at 9:30 a. m.)  
[fol. 962] M. D. McCARL resumed the stand and further testified as follows:

Cross-examination (Continued).

Examiner Basham: Do you have some questions, Mr. Graham?

Mr. Graham: Yes, sir.

By Mr. Graham:

Q. Mr. McCarl, in connection with changes that you contemplate, or may desire to make in your tariff, as I understand it, these can be made without any delay and without any prior notice as compared to the obligation of the private terminals in compliance with the Order of the California Railroad Commission. That is a fact, is it not?

A. Our changes are made by ordinance of the Board of Port Commissioners requiring two readings to become effective. The Board meets on Monday of each week, so that requires at least a week, and those are published in the official publication of the City and have to be published twice, I understand. I think there are five days between each publication.

Q. Is it not a fact that you can make tariff changes, as you testified yesterday, on occasion with only one reading, without the necessity for this delay that you have suggested?

[fol. 963] A. It's questionable whether or not that is really effective. We have in order to make our rates effective with the private terminal operators where they have received short notice. I don't believe there has been more than one or two cases during the 14 years when that has been used.

Q. But you have done it?

A. It has been.

Q. And that means change of tariff provisions within the day, then?

A. Yes.

Q. What publication do you get on these changes? Daily paper publication?

A. Daily paper publication, yes.

Q. And there is no opportunity for any objector to any change to bring that matter before any regulatory body?

A. No.

Q. Except the Maritime Commission should it find in this case?

A. That's correct.

Q. What is your situation in respect to the extension of free time in the case of a delay of the vessel? Is that solely within the discretion of the Port Manager? I think that is covered by Item 35 (d) Exception 2.

A. The application is uniform in all cases. I believe probably we have been a little stricter, if there is any strict- [fol. 964] ness in the limitation of that during the recent War period. I recall at the meeting with the other operators we decided that the terminals should not carry the load in case vessels do not load as scheduled; other vessels might be subject to delay, and so forth, and that either the shipper or the steamship company should be billed in such cases. I know I had an inquiry and advised the shipper that we couldn't protect him any unlimited length of time if the vessel failed to call. One of our vessels received the tonnage.

Q. It was all outbound tonnage?

A. Outbound tonnage.

Q. Your rule provides that the Port Manager may extend the free time such numbers of days as in his judgment is warranted and equitable in each individual case. As a result of that rule it is a fact, is it not, that there is no uniformity at all in respect to the extension of free time owing to emergencies or failure of the vessel to arrive?

A. It all depends upon the time that—

Q. (Interrupting:) Just answer the question. There is no uniformity, is there?

A. If all the vessels were delayed the same length of time, there would be uniformity.

Q. No, no. My point is this: That under such a rule [fol. 965] where free time may be extended by the Port Manager in his own judgment, there is no uniformity at all provided by the rule? Let us put it that way.

A. I would say that that is correct.

Q. So that if the Port Manager in his judgment decided to find as to one cargo owner and not as to another, he could do that under the rule?

A. That would be possible, yes.

Q. Yes. Does this rule apply only to outbound cargo or does it apply equally to inbound cargo?

A. Outbound cargo.

Q. Only?

A. I can't think of any instance offhand where it would apply to inbound cargo.

Q. Do you have any rule in respect to inbound cargo where it remains on your dock beyond the free time and where that free time is extended in the judgment of the Port Manager?

A. No.

Q. In other words, you have no extension of free time on inbound cargo?

A. That's correct.

Q. As to outbound cargo, this rule refers to a delay of the vessel due to stress of weather, accidents, and in cases of breakdowns or other emergencies. Are those all conditions which relate to the operation of the vessel itself or which have caused the delay?

A. Yes, except considering strikes as an emergency.

Q. That is what I was going to ask you. Would you consider under this rule that strike conditions were such an emergency as would permit the Port Manager in his judgment to extend the free time on outbound cargo?

A. Together with the private terminal operators we have interpreted it that way.

Q. So that it has been the practice of your terminal to extend in the Port Manager's judgment, the free time which has been necessitated as a result of strike?

A. That's correct.

Q. What would you say in a case like this: Where a vessel is scheduled to load at a terminal; has cargo on the terminal, and at the close of the day's work finds that it has a small block of cargo left to load, but that the longshoremen refuse to load because they have reached the maximum man-hours of work and the ship is confronted with the problem of either staying over a whole day to load that small block of cargo or leaves with the cargo still left on the dock and unloaded? What would you do in that kind of a case?

A. The computation ceases when the vessel starts to load. In other words, the—

[fol. 967] Q. (Interrupting:) In other words, free time?

A. It's considered as having been delivered to the vessel when the vessel starts to load.

Q. In spite of the fact that it may have loaded a particular block of cargo?

A. Provided the cargo does go on that vessel.

Q. All right. The case I am citing to you is a case in which the cargo does not, in fact, go on the vessel at all. Do you understand the situation I am trying to portray?

A. Would that be shut-out cargo?

Q. That would be shut-out cargo.

A. In that case storage charges would be in order.

Q. Against whom?

A. I would say it would be against the steamship company.

Q. Have you ever had that occasion arise?

A. No, we haven't.

Q. You don't know that last week two of the vessels of the Luckenbach line had that very occasion happen to them, of leaving cargo on the dock in preference to holding the two vessels over for another working day, because of the fact that they could not load the cargo on account of the stevedore's refusal, they having already worked their man-hours on the job?

A. I don't recall that occurrence at our facilities. It wasn't brought to my attention.

Q. Have you ever had that occur at your facility?

A. Not to my knowledge.

Q. Take a case where the ship has actually started to load. As I understand you, the free time stops then?

A. Yes.

Q. You consider that the running of the period?

A. That's correct.

Q. And during the loading there is a strike of short duration, and the ship, not wanting to wait out the strike, leaves the port and leaves some of their cargo on your dock. What do you do in that kind of a case?

A. It usually happens that the vessels load at other facilities about the bay district after they leave our facility and some cargo has been transferred.

Q. At your expense?

A. Oh, no.

Q. At the ship's expense?

A. At the ship's expense.

Q. Let us take the case of where the cargo is not transferred at all and the ship leaves and you have the cargo until the termination of the strike. That has occurred?

A. I don't recall it just that way, until the termination of the strike. If that were outbound cargo and after the termination of the strike it were loaded to another vessel, I believe we would consider that that was an emergency, [fol. 969] provided it was loaded to another vessel at the termination of the strike.

Q. That is right. I am assuming that it would be, yes. In which case during that period you would extend the free time even though your computation of free time had terminated prior?

A. Yes, I think we would.

Q. So that what this rule really means is that in any case where in the judgment of the Port Manager free time should be extended or, let us say, wharf demurrage should not be collected, it is waived?

A. We have that—

Q. (Interrupting) Let us answer that question first and then explain it. That is a fact, is it not?

A. I would say, No. If you just want a yes-or-no answer, I would say, No. But I could answer the other way with qualification.

Q. All right. Go ahead, then.

A. While the tariff item says, "In the judgment of the Port Manager," we would confer with the other terminal operators before making decision.

Q. As to whether they agreed with you or not?

A. That's correct. I think it has always been the uniform interpretation in so far as the application is concerned.

Q. Do all the terminals have the rule in exactly the same [fol. 970] phraseology that you have it?

A. Theirs is more definite on file with the Commission. I might say that when we made up our tariff quite a number of years ago those particular items have not been changed and there is some expense involved in making changes, having to print the changes in the official publications. And knowing that there would apt to be a number of changes after the tariff was first published, we made those broad enough to eliminate that expense; if for no other



purpose. There is no intention of having any advantage over the competitors.

Q. Has the California Railroad Commission laid down a rule to cover this situation of extension of free time for the private terminals?

A. I don't know as they have laid down any rule. The tariff item speaks for itself, I believe.

Q. And this item of yours is different than the private terminals' tariff item?

A. It is worded differently, yes.

Q. But, as I understand you, you attempt to conform to the same practice?

A. We do conform to the same practice.

Q. Let me ask you again. Isn't it a fact that the ultimate effect of this rule is to permit the extension of free time, or, let me say, the waiver of demurrage when in the judgment of the Port Manager, it is warranted?

A. That's the purpose of it.

Q. And that is the actual effect of it?

Mr. Jones: Mr. Examiner, I think this rule speaks for itself and this question merely calls for the conclusion of the witness as to the legal effect of the rule.

Mr. Graham: Oh, no, no. It doesn't at all.

Mr. Jones: The question as framed and put to the witness does not correspond to the limitations that he has placed upon it and the interpretations of it in practice.

Mr. Graham: That is what I am trying to bring out in this questioning. As far as I am able to find out in the various examples which I have cited to this witness, there isn't any limitation to the rule and I don't think there is.

The Witness: On the application.

By Mr. Graham:

Q. On the application of the rule there is really no limitation except that the time may be extended, which means that the demurrage may be waived in the judgment of the Port Manager, and I am not criticising the rule, understand. I am just asking you if that is not the practical effect of it.

[fol. 972] A. It is so worded that it can be applied that way.

Q. Yes. Mr. McCarl, you have heard discussed the subject of penalty demurrage. You heard Mr. West's testimony here the other day?

A. I did.

Q. Are you not in accord with the principle of demurrage on a penalty basis?

A. Not entirely, no. I think it depends very largely on conditions. I don't see how a new port, just having constructed a number of facilities, would be justified in driving business off of their facilities in all cases during the free time period and shutting themselves out of revenues which might be obtained from reasonable storage rates.

Q. So your interpretation of "demurrage" really amounts to, rather than an attempt to hasten the movement of the goods, a fixation of a rate which should properly be called "storage"?

A. I think so. And in so far as the Port of Oakland is concerned, we have tried to co-operate with the other terminal operators in arriving at what we consider a reasonable rate.

Q. Is it not a fact that the actual result of your structure in respect to what you call "demurrage," is that you have no penalty charge which forces the removal of the cargo from the dock, and that what you actually have is a charge [fol. 973] for storage?

A. That's correct.

Q. Do I understand that it is your opinion that at the present time the Port of Oakland dock facilities are still pioneering in the development of their trade?

A. I would say so, yes.

Q. Is it not a fact that rather than pioneering the facilities are over-built and that that gives you sufficient space to permit of storage on facilities which, if fully occupied, would be required for transit business?

A. I wouldn't say "over-built." I would say we are under-built, if anything.

Q. Well, it is a fact, is it not, that in these transit facilities that you have sufficient space available at most, or all times, to permit rather long term storage?

A. We think that is one of the functions of the terminal operations.

Q. Now, listen! I know that.

Examiner Basham: Answer the question.

By Mr. Graham:

Q. That is the fact, is it not?

A. We can accommodate storage.

Mr. Graham: Will you read that question? I think if you will stick to these answers we will get along a little faster. [fol. 974] May I have that question read?

(The question referred to was read by the reporter as above recorded.)

The Witness: Most of the time.

By Mr. Graham:

Q. And those facilities are not comparable to your competitor dock operators for the most part?

A. In what way "not comparable"?

Q. Whose facilities are more or less limited to transit shed facilities? Don't you think that that is a fact?

A. I would say they are quite comparable in some of our competitors and not comparable to some others.

Q. And not comparable to others, that is right. Isn't the answer to your determination to have the storage rates based upon the fact that your transit sheds are of such size and scope that this scheme fits in best to your operations?

A. That is correct.

Q. And this space that you use for storage purposes is, in fact, shipside space?

A. Yes.

Q. Do you have actual storage space distinctly from shipside space in which you store goods on a storage basis at a different rate than prevailing on the shipside facilities?

A. Only at Terminal Building C.

Q. And what is the situation again with respect to Terminal Building C? [fol. 975]

A. That is used for overflow cargo or for cargo that is to remain for long-time periods that they don't want to put in the transit sheds at the Outer Harbor Terminal. We have nothing but the transit shed. There is at the other terminal facilities.

Q. And then you have your leased facilities which are in a different category?

A. Yes.

Q. As to Terminal Building C, will you again tell us what your charges are on cargo placed in C?

A. Either at the daily basis, the same as a place in the transit shed; or in a few cases on a square foot basis.

Q. And who determines on which basis the cargo is to remain in C?

A. The management determines that.

Q. And—

A. (Interrupting) The management determines that. It depends, of course, on the wishes of the shipper. The shipper would first have to make request for the square foot basis before it would be even considered.

Q. I see. And you determine in your own judgment whether you will give it to him or not?

A. That's correct.

Q. At what point does a greater revenue accrue to you on [fol. 976] a per foot basis in respect to the length of time that the goods will remain there?

A. I haven't made a definite computation of that. We used the square foot basis so seldom. It would have to remain quite a length of time before the square foot basis would be attractive, from the shipper's standpoint.

Q. Yes.

A. Because of the transfer charges; either one transfer charge of 60 cents, or in the case of inbound water movement that goes out again by water there would be the two transfer charges; 60 cents each way.

Q. In addition to the application of the cargo owners to receive this square foot rate you do handle some cargo in C for your own convenience?

A. We have put some there.

Q. And that remains on a daily basis?

A. Daily basis, yes.

Q. The same as it would in the transit shed?

A. That's correct.

Q. And I assume that all the cost of handling cargo from the transit shed to and from C are for the Port?

A. That is correct.

Q. And again it is within your discretion as to whether you shall or shan't move to or from, or, let us say, between the transit shed and C?

[fol. 977] A. Yes; the same as if we would move it from one part of the transit shed to another part of the transit shed.

Q. And that would apply also, of course, to piling in the transit shed or piling in C?

A. That is all optional with the management.

Q. You have kindly given us these lease forms, which are in evidence as Exhibits 98 and 99. I wonder if you can tell us what companies are lessees under each of these two forms?

A. Have you copies of them?

Mr. Jones: Mr. Scoll has a list. I understand he was going to put in, and that will give that information.

Mr. Graham: Are you going to put that in?

Mr. Scoll: This is a list that was furnished to us by Mr. Jones. It shows the names of the tenants under long term leases and those also who hold under the licenses, both forms of which have been introduced in the record.

Mr. Graham: I wonder, Mr. Scoll, if you will put the list in.

Mr. Scoll: Put it in here?

Mr. Graham: Merely because of the fact that the evidence leaves a gap as the evidence now stands, because we don't know who are the lessees.

Mr. Scoll: I was planning to put it in. I can put it in now. [fol. 978] Examiner Basham: Let us put it in.

Mr. Jones: Reserving my objection upon the ground of materiality, I presume that list is correct.

Mr. Scoll: I offer in evidence a letter from the Port of Oakland Board of Port Commissioners under date of January 23, 1940, addressed to the United States Maritime Commission, signed Alice S. Troxel, Secretary, to which is attached a typewritten list which is entitled "Leases and Licenses." At the end of this list is written in ink the name "Western Vegetable Oil." That name was added to the list of licenses by one of our staff after consultation with Mr. McCarland and Mr. Jones as one of the licensees, which was left out of the original list.

Exam. Basham: It will be received as Exhibit 103.

(The list of leases and licenses referred to was marked "Commission's Exhibit 103" and received in evidence.)

Mr. Scoll: And I ask leave to withdraw it to have copies made for the other respondent.

By Mr. Graham:

Q. Mr. McCarl, this Terminal Building C is a two-story building, is it not?

A. Yes.

Q. And you store on both the first and second floors?

A. Sometimes on the second floor.

Q. And that necessitates additional handling, service [fol. 979] charges or service, let us say, to get the goods to and from that second floor?

A. Yes.

Q. And if you move them for your own account those charges are also for your own account?

A. The only additional expense is going up and down the elevator.

Q. That is right. Now I go back to this extension of free time. In your opinion, aside from the question of competition, which I don't want you to consider for the minute, is that rule as presently stated, more flexible than, in your opinion, it should be?

A. I don't think so, in as much as we are a public body we are supposed to protect the public interests. I don't think it is too flexible.

Q. In other words, aside from any question of competition, which I don't want you to consider in answering this question, it is your opinion that this rule as presently stated and as presently applied should continue?

A. Unless it is determined that we are under some regulatory body.

Q. That is another problem.

A. I see no objection to a continuation of the rule.

Q. Among other lessees you have the Keystone Steel and Wire Company. Where are their facilities located?

[fol. 980] A. East Oakland at this facility at 19th and Livingstone Streets.

Q. Are those facilities adjacent to shipside facilities?

A. No, they are not.

Q. How far away are they from the nearest Port of Oakland shipside facility?

A. Well, they are pretty close to the lumber facility, which is open for lumber only.

Q. They don't use that facility?

A. No.



Q. How far away are they from the nearest facility which they use which belongs to the Port of Oakland?

A. I would say a mile from the Grove Street Terminal.

Q. And prior to locating there where was this company located?

A. I am not entirely sure.

Q. It was not on Port of Oakland property?

A. No, that is correct.

Q. Haven't you found that as a result of the making of this lease with the Keystone Steel and Wire Company that the business of the Port of Oakland in respect to the tonnage of this company has increased?

Mr. Jones: We will stipulate that that is the case, not only with Keystone but with all of our lessees, and that is one [fol. 981] of the primary purposes of making these leases.

A. I might say that we did get most of their tonnage prior to that, however, because they used the Luckenbach Steamship Company principally, and the Luckenbach Steamship Company used our Grove Street facility.

By Mr. Graham:

Q. And do they continue to use the Luckenbach Steamship Company, or did they following the signing of this lease?

A. Yes.

Q. Do you know whether they have used any other steamship company or any other steamship company has called at your facilities which did not heretofore call there?

A. There was some talk of it, but I don't believe, however, that we had any actual calling of other vessels of other lines with their tonnage.

Q. In other words, you do not know that other steamship companies called at your pier as a result of this tonnage that flowed to you as a result of this lease?

A. Not to my knowledge.

Q. Are you familiar with the amount of taxes that accrue to the Port of Oakland yearly?

A. Except the taxes that are levied to cover the interest charges, we don't levy any taxes for Port operations.

Q. Are those taxes that are levied levied as a result of action of the Board of Port Commissioners?

[fol. 982] A. As a result of charter amendment adopted by the people which specifies that the interest charges should be paid from taxation.

Q. Yes. But the levy is by the Board of Port Commissioners rather than any other body?

A. I believe the City Council makes the arrangement for that levy. The Board of Port Commissioners do not.

Q. Do you know whether there is a maximum percentage or figure beyond which this tax can not go?

A. I don't believe there is any maximum, because if all the bonds were sold the interest would be one amount, and a smaller number of bonds, the interest would be a lesser amount.

Q. On the question of amortization of these bonds, is that not taken care of by taxes also?

A. The same arrangement as for the interest.

Q. Yes, that is what I thought. So that the fact is that municipal taxes take care of bond interest and bond amortization?

A. That's correct.

Q. There is no prohibition, however, is there, against taxes taking care of operating expenses if this were found desirable to have them do so?

A. I don't think there is any prohibition, but we have always had more than sufficient revenues to cover the [fol. 983] operating expenses.

Q. But there isn't any prohibition?

A. No prohibition.

Q. At the present time am I correct in my understanding of your testimony that your operating revenue has been sufficient to take care of your operating expense?

A. Considerably more, yes.

Mr. Differding: Is that clear? Are you confining that to revenues and operating expense of the terminal facility?

Mr. Graham: If you will just wait a minute; I am going to cover that.

Mr. Differding: Pardon me.

Mr. Graham: That was my next question.

By Mr. Graham:

Q. Within the Port of Oakland jurisdiction are included a good many properties other than terminal facilities; that is correct, is it not?

A. That is correct.

Q. You have an airport?

A. That's correct.

Q. And you have properties like this property that is leased to Keystone Stool and Wire?

A. Industry.

Q. Industrial property?

[fol. 984] A. That's correct.

Q. In general, what other properties have you that you derive revenues from or that are a source of revenue or that are expensive to you?

A. I could possibly answer some questions along this line but I am not as well qualified.

Q. I just want it very general anyhow.

A. The principal source outside of direct operation are from the leases. There might be some so-called franchises. There is some question of whether we get those revenues or they accrue to the city. I am not quite sure. The leases, I think, would be the principal source.

Q. All of your revenue from whatever source, including the airport and the leases, industrial property, and so on, port operations, are pooled into one fund, I take it.

Mr. Jones: Not much from the airport though.

By Mr. Graham:

Q. Whatever revenues you have are pooled?

A. They are all taken in on the same fund.

Q. And all of your expenses are also pooled? In other words there is no segregation so far as you are concerned when you state that your revenues exceed your expenses?

A. No. That's correct.

Q. That is correct?

A. Total revenues and total expenses.

[fol. 985] Q. And you don't segregate, let us say, the storage account from the demurrage account or from your dockage account or your toll account? That is all revenue?

A. We keep separate items to know how much we derive from each of those sources, but we don't offset the cost against the revenue for respective services.

Q. That is what I was going to ask you. That is right. I think you testified that you had an increase in tolls and dockage and service charges. Are these the only increases in your charges that have been recently made?

A. Also carloading, car unloading. We put in a so-called freight transfer service charge that we didn't have previously.

Q. When were these increases made?

A. Quite recently.

Q. Well, within the last month, two months?

A. Within the last two or three months.

Q. And some of those increases were borne by cargo and some by the vessel, is that correct?

A. The service charges are borne by the vessel.

Q. How about dockage?

A. The dockage is borne by the vessel but it has been some time since there was any increase in that item.

Q. Tolls are borne by the cargo?

A. Tolls are borne by the cargo; carloading; service.

Q. Although I think the answer is obvious, but why was it [fol. 986] you made these increases on these particular items?

A. Through conferences with the other terminal operators, taking into consideration the order of the Railroad Commission, the feeling in general that the charges were too low.

Q. That is, too low, having in mind the service rendered or the capital investment involved for features of that nature?

A. Yes.

Q. And it is also a fact, of course, is it not, Mr. McCarl, that one of the reasons that you made the increases was to get more money?

A. Sure.

Q. Our associate over here has suggested that that was the main reason. That is probably true, is it not?

A. If we were just operating by ourselves I don't think the money factor would be quite as important as it is where we have private operators.

Q. Well, you do recognize, do you not, that the costs of operating the facilities which you operate, and particularly the port facilities, have increased and are now on the increase?

Mr. Jones: I think I will have to instruct Mr. McCarl—all right, I will withdraw that.

Mr. Graham: I think that is almost common knowledge, Mr. McCarl. You must know it also.

[fol. 987] A. I would say that the costs per unit have increased. Labor costs have gone up; materials and supplies.

By Mr. Graham:

Q. That is right. So that the cost of operating has increased in these facilities which you operate?

A. Yes, except I would have to qualify as to the tonnage increases. The total cost for operating facility may not have increased but the cost for the various services have increased.

Q. How is it that co-extensive with these increases you did not make any increase in your demurrage or storage rates?

A. Because our competitors haven't made any increases. We can't make any increases unless they do.

Q. But, as far as you are concerned, you are desirous of including in your increases an increase on storage and demurrage also?

A. I think some increases could be made.

Q. Have you determined in your own mind to what figure the rates should properly be increased in your facilities?

A. I think that requires pretty careful study.

Q. Yes, but—

A. (Interrupting) With respect to competitive conditions.

Q. I am just asking if you have determined in your own mind what they should be increased to.

[fol. 988] A. Not definitely, no.

Q. You would not like to make a statement on that?

A. No, I would not.

Q. By the way, when you testified that these rate increases, or rate changes or other changes in your tariff, many of them were made after agreement with or in concert with private terminal operators; is that the fact?

A. And public terminal operators; public and private.

Q. Other terminal operators, let us call them. Those other private terminal operators, however, who have made such rate changes, such changes are all subject to the California Railroad Commission, are they not?

A. Yes.

Q. And yours are not?

A. That's correct.

Examiner Basham: Do you have a regular meeting to determine those questions of tariff interpretation?

The Witness: Yes. Not regular. We used to have quite regularly, but we don't meet at any regular periods; just occasionally.

Examiner Basham: Do you have any kind of agreement or understanding among yourselves that you will meet to iron-out these questions?

The Witness: Oh, just more or less implied. We have nothing definite. All of us are free to make changes as [fol. 989] we see fit, but we don't consider it advisable or desirable to do that.

By Mr. Graham:

Q. Do you all agree on these interpretations when changes are made?

A. Yes. I would say we do.

Examiner Basham: And you haven't filed any memorandum of such agreement or understanding with the United States Maritime Commission?

The Witness: No, we have not. We have one under consideration at the present time; the California Association of Port Authorities. I think that will be done very shortly.

By Mr. Graham:

Q. Mr. McCarl, the private terminals involved in such a situation not only are required to file their charges with the California Railroad Commission but all of these charges are subject to approval or disapproval by the Commission and attack by any interested party?

A. That's correct.

Q. So that as to the private terminals, their agreement in these meetings is of no effect whatsoever until the California Railroad Commission passes on the propriety of such an agreement? That is a fact, is it not?

A. Yes.

Mr. Jones: Of course, that question assumes that the [fol. 990] Maritime Commission has no jurisdiction.

Mr. Graham: I am not worried about their jurisdiction. I am just concerned with what the private terminals' relations are with the California Railroad Commission in respect to these meetings that they have with the public terminals.



Examiner Basham: Let me ask you another question. At these meetings, what matters do you consider beyond the matter of tariff interpretation? Do you agree upon rates to be established?

The Witness: We discuss rates and agree in general upon the rates; not binding; no binding agreements, but we discuss them and arrive at conclusions.

Mr. Scoll: Are you referring to the meetings that you have with the Terminal Association of Central California, of which Mr. Cantolow is the manager?

The Witness: We are not a member of that association. We have meetings with the members of the association from time to time.

Mr. Scoll: Are these the meetings that you are now discussing?

The Witness: Those, and the California Association of Port Authorities meetings, at which the public and the private operators are present.

Mr. Scoll: What is the California Association of Port [fol. 991] Authorities?

The Witness: That is no formal association as yet; just in this tentative form. We are working on an agreement now which would be signed by most of the marine terminal operators in California. We propose to file it with the Maritime Commission.

Mr. Scoll: That would include operators in all of the California ports, is that correct?

The Witness: That's correct.

Mr. Scoll: You don't discuss with them rate matters relating solely to San Francisco Bay, the East bay of San Francisco, do you?

The Witness: No; no rate matters pertaining solely to the bay district.

Mr. Scoll: Such rate matters as you might discuss would be more likely discussed in the informal meetings to which you refer that you have with the members of the Marine Terminal Association of Central California, is that correct?

The Witness: That's correct, such as carloading, car unloading.

By Mr. Graham:

Q. Mr. McCarl, you testified the other day that some goods would not stand increased storage charges. What goods had you in mind at that time?

A. I have been told that beans, for one commodity, flour. [fol. 992] We have had shippers of paper give up the storage at our facilities and acquire private buildings which they have used for storage purposes. I don't think that commodity could stand any increase. We wouldn't get the business. I think that is quite true of a number of commodities that are handled.

Q. What others, except those three?

Mr. Differding: May I ask, Mr. Graham, would you clarify this "paper" item? There are all kinds of different papers.

Mr. Graham: I am going to clarify them all.

Mr. Differding: There are all kinds of paper articles. There are napkins, crepe paper, tissue and toweling,—

Mr. Graham: May I suggest, Mr. Differding, that if I do not cover them will you kindly follow through on this same item, because the witness has stated that in his opinion some goods would not stand increased storage charges, and I want to find out what the goods are and why they won't stand increased storage charges, and where the goods moved to and where the goods moved from. So if you will just bear close attention and break in when I finish, if I have not covered what you think should be covered, I will appreciate it.

A. Iron and steel stored in the open; lumber and lumber [fol. 993] products; fertilizer, pipe.

By Mr. Graham:

Q. That is also stored in the open?

A. Yes.

Q. As is the lumber?

A. Yes. There is canned goods and dried fruits are questionable. You might take those for the time being.

Q. Are these commodities which you have named, those which in your opinion will not stand increased storage charges, commodities which are stored on your facilities to move by water away from Oakland either in the intra-state, interstate, or foreign trade?

A. Some are inbound and some are outbound.

Q. That is all right. Some are inbound and some are outbound. Is it not a fact that total overall cost, including transportation, must be considered in determining whether these particular commodities can stand any additional charges? That is a fact, is it not?

A. Yes.

Q. So that you might just as well say as to any or all of these commodities that they could not stand any increased transportation charges. That is a fact also, isn't it?

A. I wouldn't answer that right offhand.

Q. You know that is a fact as well as I do.

A. Well, if all forms of transportation would increase, [fol. 994] which did not upset the competitive relationship. I think it might stand increased transportation charges.

Q. Then, in your opinion, as to these commodities that you have mentioned, it is not a case of the overall increases, but it is merely an increase which would affect the competitive conditions?

A. When I say, "wouldn't stand it," I have in mind whether we could still retain the business and increase the rates. If we increased the rates and drive away the business, then I would say it couldn't stand it.

Q. That is what I mean. Your interpretation of "couldn't stand any increase" means that the business would go to the competitor, but the business would still go on?

A. It might go to a competitor or it might cause the owners of plants to increase their own storage facilities.

Q. But, as I say, the business still would go on. That is a fact, is it not?

A. The business would go on in some form. It might force transportation from water movement to rail.

Q. I understand. When you use the term "will not stand increases," you mean that these commodities wouldn't stand any increased charges, having in mind your competitors?

A. Direct competitors and otherwise. It is a pretty broad subject.

Q. Well, that is what you mean by that, is it not?

[fol. 995] A. Yes. I think it requires careful analyzation as to whether or not they will stand an increase and still permit the business to move through our facilities.

Q. Yes. And so far as you are concerned, you have not had the opportunity, nor have you carefully analyzed each one of these commodities?

A. We have had a great many conferences in regard to the storage items, and I believe a number of others as well as myself, have doubted the advisability of making any increases, fearing that it would probably kill the business.

Q. By "kill" it you mean kill it as to your facilities? It would move to some other competitor, that is what you mean by that?

A. We have felt that those of us in the Bay area—

Q. (Interrupting) Let me ask you: Isn't that what you mean by it?

A. I wouldn't say "yes," or "no."

Q. I am just trying to find out what you mean when you say that the goods will not stand any increases. Do you mean that they will move to some other competitor, which is one subject; or do you mean that the goods won't move?

A. It might be either. For instance, if we increased the rate on canned goods and dried fruit and that caused the owners of the different canneries to increase their own storage facilities, that tonnage will not move to a competitor; [fol. 996] it will just kill the business so far as the terminal operators are concerned.

Q. I understand. But the goods will still remain to be sold? They still sell the canned goods?

A. Oh; yes.

Q. Is that true with all of these commodities? What you really mean is that these increased charges may result in either the business going to a competitor of yours in the same business that you are in, or that they won't go to a terminal operator at all?

A. Well, in general I might answer, "Yes."

Q. Yes. How come that the increase in tolls, dockage, service charges, carloading and car unloading and transfer charges did not have this effect?

A. The competition is limited in so far as those items are concerned, and after careful analyzation we felt that it would not materially affect the movement of tonnage through our facilities because those increases were made at the same time by our immediate competitors.

Q. Then I take it that, correspondingly, if the increases were made in demurrage or wharf storage by your immediate competitors that, likewise, would have no effect in respect to the movement of these commodities?

A. I think the competition is much broader in the case of wharf demurrage, and that is why I mentioned in the other [fol. 997] case "immediate competitors." I think there is the competitor and I think there is the additional plants that might be constructed and the old facilities that might

be acquired to use for storage purposes. The competition is much broader than the question of storage.

Q. You do agree, do you not, that the increase in tolls, dockage, service charges, carloading and unloading and transfer charges increase the total over all expenses of the cargo owner?

A. They do; yes.

Q. And is it not as likely to assume that the increase in storage would have the same effect, if any, that the increase in the other charges might have?

Mr. Jones: Mr. Examiner—

By Mr. Graham:

Q. Why is there any distinction between the increases in one and the increases in the other?

Mr. Jones (Continuing) —that is the very question that has been asked and answered half a dozen times in the last 15 minutes.

Examiner Basham: Objection overruled. Go ahead.

A. It has been my experience in nearly 30 years of terminal operation that that is one of the most controversial items that the terminal operator has to deal with.

By Mr. Graham:

[fol. 998] Q. You mean, demurrage and storage?

A. Storage and demurrage. I have found that there has been a great deal of laxity in the assessment of storage charges. There has been granting of long free time periods without the assessment of charges on specific commodities. It is one of the most troublesome items that terminal operators have had to contend with, and that is why I say it is in a category of its own and not comparable with the other charges that the terminal operator makes.

Q. You are just wandering far afield. That is all very interesting information, but I am still trying to find why an increase in storage charges will have an effect that is not noticeable in an increase in tolls, dockage, service charges, carloading and car unloading.

A. In those other items they couldn't use private buildings. The conditions are entirely different.

Q. These beans to which you refer, what is the extent of the movement over your facilities of beans in water borne commerce?

A. We have quite a sizable tonnage of beans.

Q. "Sizable," doesn't mean anything to the record. How much?

A. I don't believe I have the definite tonnage figures with me. I can obtain that information for you. I didn't think we would go into that type of questioning and I didn't come [fol. 999] prepared for it.

Q. To where do those beans move? In what trades do they move? Off shore?

A. In intercoastal trade.

Q. Entirely?

A. Intercoastal and Gulf, including the Gulf; I think almost entirely.

Q. And if you increased your storage charges on these beans, to what competitor might they go, in your opinion?

A. They probably would be held in the country warehouses, we are so advised. It might go to Stockton, Richmond or any other competitor in the bay area.

Q. Have you any idea, Mr. McCarl, the extent of storage given to beans in your facilities at your present rates?

A. I couldn't give you any—

Q. (Interrupting) In other words, how much cargo might you move? That is what I would like to know.

A. It would just happens to be a guess. I wouldn't know just exactly what our bean tonnage is.

Q. Is it much or little?

A. Yes, it is much.

Q. Quite a bit?

A. Yes.

Q. But you don't know how much?

A. No.

[fol. 1000] Q. Let us take flour. What is the situation with respect to flour? What tonnage of flour do you store now under those rates?

A. The principal storage on flour now is at the 9th Avenue Terminal under the direct operation, although we obtain the revenues. The operation is handled by the McCormick Steamship Company, and I don't know just what the tonnage is. We have some flour at Grove Street, but very little now. Most of it moves rail instead of water.



Q. In your opinion, what other facilities might store this flour if you raised your rates?

A. I don't think anybody would store it. I think it would move rail.

Q. How much of that flour moves over your dock facilities in water borne commerce?

A. Most of it moves rail. There is some storage even though it might be a small amount. So I would say that I don't know the exact tonnage figures. I have all those figures but I don't have them with me.

Q. How much moves over your dock facilities, do you know?

A. I would say—

Q. (Interrupting) In tonnage?

A. Quite a number of carloads per year. I don't know exactly.

Q. How many tons, you don't know?

[fol 1001] A. No, not offhand.

Q. Not very much, in any event?

A. (No response.)

Q. I say, not very much in any event?

A. Not so much now. There used to be a lot in the past.

Q. In this case, as distinguished from the case of beans, the increase in your storage rates in your opinion might result in the movement of flour by rail rather than by water? That is what might happen?

A. In the case of flour you say?

Q. Yes.

A. Yes.

Q. Of course, you might have exactly the same thing happen if the water carriers increased their freight rates on flour?

A. Yes.

Q. Let us take paper. What kind of paper are you talking about in the first place?

A. I have in mind principally news print, but it also—

Q. Do you mean news print in rolls?

A. Yes. It also applies to other paper products, because we have made some pretty good sized increases in paper products fairly recently.

Q. You mean you have made increases in storage rates on paper products.

A. Yes.

[fol. 1002] Q. So that they have a special rate as distinguished from other cargo?

A. Yes, higher rates.

Q. And you have not found that those increases on paper and paper products have resulted in your losing the business to somebody else or going to rail?

A. Oh, I think to some extent, yes.

Q. Certainly not comparable with the increased revenue you have gotten?

A. Well, I wouldn't say for sure.

Q. Have you made any study into it at all?

A. No.

Q. Iron and steel: What would happen to it if you increased your storage and demurrage rates?

A. Well, we have been told that it costs much more to handle iron and steel, including scrap iron, through the bay area than it does in Southern California, and there is large tonnages that move out of Long Beach and Los Angeles that might move through Oakland:

Q. As a result of what?

A. As a result of the total expense of doing business at one place as compared with the other.

Q. That is right. In other words, the question of storage charges is at the most only one element in those expenses?

A. Well, we have had some very——

Q. (Interrupting) Now, listen. Isn't that a fact?

[fol. 1003] The Witness: What was the question again?

(The question referred to was read by the reporter as above recorded.)

A. Yes. Only one.

By Mr. Graham:

Q. Is it not a fact that the same thing can be said of the rest of the commodities which you have listed: Fertilizers, lumber, pipe, canned goods and dried fruit, because I don't want to go down through all of them?

A. I would say on lumber that our rates are much higher than our competitors.

Q. The same answer that you gave me with respect to iron, steel and scrap, applies to pipe, canned goods and fertilizer?

A. In general, yes.

Q. Yes. Would you say that considerable of your problem may be the result of the unregulated San Francisco terminals?

A. To some extent.

Q. And that if you did have uniformity in practice through regulation of all the terminals this problem might disappear?

A. We are trying to work out some—

Q. (Interrupting) This problem might disappear, isn't that a fact?

Mr. Jones: Regulation or otherwise.

The Witness: Read the question.

(The question referred to was read by the reporter as [fol. 1004] above recorded.)

A. I wouldn't say entirely.

By Mr. Graham:

Q. In connection with westbound cargo which may consist of several varieties for one consignee and which is delivered in part lots, is it not necessary to shift cargo to conserve space after the lot is pigeonholed due to part deliveries?

A. We haven't found that necessary.

Q. Your facilities are so large and you have so much space—let us call it "free space"—that you don't have to do that on your facility?

A. We usually have the cargo placed at the time of the discharge from the vessel so that it won't have to be moved. Stevedores put it directly at those locations.

Q. So that you can make partial delivery of lots without necessity of moving them thereafter?

A. That's correct.

Q. That situation would not prevail with most of your competitors, would it?

A. With some of them I would say it wouldn't.

Q. With most of them it wouldn't?

A. (No response.)

Q. Don't you think that is a fair statement?

A. I don't think I would say that is a fair statement, having in mind Parr-Richmond and Enghal, which would be [fol. 1005] about the same as ours.

Q. I may have asked you this, Mr. McCarl. Do you know how long a period it would take for the warehouse rate to result in a lower charge than a charge on a demurrage rate?

A. It would vary on different commodities.

Q. Can you give us any specific commodity?

A. No. I have had occasion to check that recently on one commodity, I recall, with Mr. Ventre. They operate warehouse facilities. And taking into consideration the in and out charges and the storage charges in comparison with the daily basis it took quite a period, quite several months before the warehouse would be cheaper than the dock. The reason I obtained that information was because our solicitors had been told that it would be cheaper to store in the warehouse. But I think in general it would take quite a little while in view of the transfer charges and the in and out charges, plus the storage, before the warehouse rates would be lower than the dock storage.

Q. Several months?

A. In general I would say, "Yes."

Q. So that the effect of that is that on your facilities, goods may remain on transit sheds in storage for several months at the reduced rate?

A. Yes, there is one—

Q. (Interrupting:) That is right, isn't it?

[fol. 1006] A. Yes, with one exception. There is no transfer at one of the competitor's facilities between the transit sheds and the warehouse facilities. That is my understanding.

Q. That is when that is made for the convenience of the competitor?

A. Well, I understand that there is no transfer between the transit sheds and the warehouse facilities.

Q. As far as you are concerned, you are in the same situation when you transfer to your transit shed at C for your convenience?

A. That is a different set-up entirely.

Q. That is a fact, is it not?

A. It is a different set-up entirely.

Q. Isn't that the fact, that when you transfer from your transit sheds to C for your convenience, that the expenses are borne by you?

A. (No response.)

Q. I think you stated that.

A. Yes, that is a fact. But there is no warehouse comparable to the other situation.

Q. May I ask you something about this bean cleaner? Do you rent the facilities to a private industry, which facilities are used for bean cleaning?

A. Those are his own facilities. That is the cleaner itself. We just rent the space.

[fol. 1007] Q. You just rent the space?

A. That's all.

Q. And that is on a lease basis?

A. Month-to-month for rental.

Q. Month-to-month rental basis?

A. Three cents per square foot per month.

Q. For space. And what he does with the cargo that goes in there with respect to charges on that cargo, is his business, is that right?

A. That is right.

Q. That is right?

A. That's correct. He has his tariff on file with the Railroad Commission.

Q. He does not hand any of that over to you at all?

A. When he does turn it over to us, we assess our charges in accordance with our tariff. After he has cleaned beans he may hold them for, say, the 30-day period and then they are turned over to us and then that becomes our property and then our charges apply.

Q. How long may he hold beans in storage?

A. So long as he wants to pay us 3 cents a square foot for space.

Q. After how long a period of time?

A. He just pays for the space that he occupies, and while he is paying us 3 cents a square foot, the beans are in his [fol. 1008] custody. When he turns them over to us, then our regular rate that we apply on beans comes to us.

Q. In this space which he occupies, which he can use as he pleases, you charge him a per foot rental, a per square foot rental?

A. That is correct.

Q. What is that?

A. Three cents per square foot per month.

Q. And that is whether he uses it for beans, machinery or anything else?

A. Any space that he uses.

Q. Does the Port of Oakland perform the service for receiving and delivery of cargo to and from this space rental area?

A. Yes, we receive it to and from.

Q. And delivering also?

A. I have in mind this transfer charge. We receive it from the dock and take it over to the space rented and then when it goes back for water movement we receive it from that space and take it into the transit shed for water movement. We receive it in conjunction with our service that we perform for the steamship companies in receiving cargo for outbound movement.

Q. And what is your charge for that delivering and receiving?

[fol. 1009] A. The 60 cents covers the transfer, and then we have the service charge against the steamship companies. That includes the receiving of cargo for outbound water movement.

Q. As to that cargo, however, in your space rental area, do you have any receiving and delivering that is not for water movement?

A. If it doesn't move out by water it generally moves by rail.

Q. Or truck?

A. We perform the carloading service and assess a carloading charge.

Q. And that takes care of your receiving and delivering?

A. And then we get a checking charge from the railroad companies if the cargo does come in by water. If there is any water movement connected with it the checking is covered by the charge assessed against the railroad company.

Q. As far as the charges are concerned themselves, you only assess a charge for carloading and car unloading and your rental?

The Witness: It isn't quite clear just what you mean there.

Mr. Graham: Read the question, please.

(The question referred to was read by the reporter as above recorded.)

By Mr. Graham:

[fol. 1010] That is the cargo itself. What does the cargo pay, except rent?



A. By the "cargo," you mean the charges to the shipper?

Q. Yes.

A. The carloading and the rental. This transfer, of course, is against the cargo.

Q. That is transfer from your—

A. (Interrupting:—) From the transit shed to the terminal building.

Q. Is that the only kind of cargo that you have in your terminal building, cargo that is to or from your transit shed for water movement?

A. That's the only type we are interested in.

Q. Is that the only kind you have?

A. Yes. That's all I know of right now.

Q. In other words, you do not have any movement or any storage of cargo on cargo there that isn't at some stage of the game in water transportation over your dock?

A. There may be some beans that moved by rail that this bean cleaner operates himself. We don't check those in either direction, however. We have nothing to do with those.

Q. Does the Port of Oakland issue either a negotiable or non-negotiable receipt for cargo in this rental area?

A. Not the rented area.

Q. Not at all in the rented area?

[fol. 1011] A. We have never been called upon to do that.

Q. You don't issue anything at all?

A. No.

Q. No document?

A. No.

Q. What document does the owner of the cargo get as to the cargo that you have in such an area?

A. Take pineapple. That's the one that I happen to have in mind because that is all that there is in there on this basis, outside of these beans in the bean cleaner. When the cargo comes in from the vessel we transfer it over to the facility. As far as my knowledge goes, we haven't been requested to issue any receipts covering it. They know how much came in on the vessel. We issue a receipt to the steamship company.

Q. As having received the goods from them?

A. Yes. I don't know of any receipt being issued to the owner.

Q. But the steamship company doesn't own that cargo. Suppose the owner of the cargo came to you and wanted

some sort of a document, would you issue him a negotiable receipt?

A: We had that question raised one time and we didn't fully decide whether we would or wouldn't.

Q. In any event, you have never done it?

A. We have never done it.

[fol. 1012] Q. Then the rest is hypothetical.

Mr. Scoll: May I ask a question here to further expand that point?

Mr. Graham: Yes, surely.

Mr. Scoll: You referred in your testimony to situations where a shipper or consignee might have cargo on your docks under the wharf storage rate for some months. Do you recall?

The Witness: Yes.

Mr. Scoll: Do I understand you properly that even in those cases you do not issue any certificate or document or any other evidence of ownership to the owner of that cargo, so that if he wants to he may sell the cargo?

The Witness: All cargo that is put in the transit sheds that may be stored is receipted for by hand tag, what we call "memorandum" receipt. It is given to the truck drivers. Or in the case of cargo delivered by rail, we sign one of their delivery receipts that we have received the cargo.

Mr. Scoll: So that you either acknowledge the receipt on a rail delivery order or you issue your own memorandum receipt?

The Witness: Yes.

Mr. Scoll: Is that correct?

The Witness: Yes. Sometimes, the truck drivers have [fol. 1013] their own delivery form that is signed by the check clerk.

Mr. Scoll: But in any case you do issue your own memorandum receipt?

The Witness: Yes.

Mr. Scoll: Will you supply a form of that memorandum receipt for the record?

The Witness: Yes.

By Mr. Graham:

Q. Mr. McCarl, suppose the owner of some of that cargo—

Mr. Scoll: Excuse me.

Mr. Graham: I thought you had finished.

Mr. Scoll: Will you also supply for the record the form of dock receipt that you issue?

The Witness: Have you in mind this non-negotiable warehouse receipt that you had reference to?

Mr. Scoll: Yes.

The Witness: Yes.

By Mr. Graham:

Q. Suppose the owner of that cargo in such facilities wants to dispose of part of it and have it delivered to some conveyance. What kind of a document does he present to you which you can honor to permit the carrier to withdraw the cargo or a part of the cargo?

A. Do you still have in mind this terminal building C?  
[fol. 1014] Q. Yes.

A. He simply gives us instructions to make certain deliveries and we make them on the strength of this instruction.

Q. In other words, he writes you a letter, let us say?

A. Yes.

Q. "Deliver to John Jones a thousand cases of so-and-so"?

A. Yes.

Q. And you do it?

A. It might be a letter or a delivery order form.

Q. How do you recognize John Jones? Does he not present a document to you at all, the man who is going to get the stuff?

A. Not necessarily. It goes out by water principally. We simply deliver it to the steamship company in accordance with the instructions of the owner of the goods.

Q. Suppose that it does not go out by water but goes out by land transportation, rail or truck; then what do you do? Do you give it to any truck driver who drives up and says, "I am here for a lot of cargo for John Jones"?

A. No, we haven't had that experience.

Q. Well, you moved some of this cargo out by land transportation. You told me so.

A. This particular cargo that is on a space rental basis?

Q. Yes.

A. I told you some of the beans go out by land transportation.  
[fol. 1015]

Q. All right. Now, what kind of a document do you get from them? I am just trying to find out what kind of a document you get or give in respect to this cargo that you have got in these sheds.

A. I think I stated that the beans that go out by rail are still in the custody of the bean cleaner operator.

Q. Let us take the beans that are in your custody that you described. Not the ones in the bean cleaner's custody. You told me that some of those beans are transferred to your custody. What I want to know is, what kind of a document do you give to whom in connection with that kind of a cargo?

A. We don't have to give any document. They are just transferred over to our custody.

Q. And you don't give any document at all?

A. No.

Q. So if someone came along and wanted a partial delivery of some of that cargo which you are holding in those facilities, if the man who deposited them with you wrote you a letter and said, "Give them to so-and-so," you would give them to so-and-so?

The Witness: Read the question, please.

(The question referred to was read by the reporter as above recorded.)

A. If we had a delivery order or letter from the owner to [fol. 1016] deliver them to a certain truck operator and the truck operator would come up to get them, we would deliver them to him.

By Mr. Graham:

Q. What identification would you require from the truck operator? I have asked that six times and I have been all around the barn to get the specific answer.

A. We don't have those specific instances; but the operators—the terminal force usually knows these various operators and we have never had any trouble about making misdeliveries.

Q. That is how you would make the delivery, because your terminal force knows the truck driver?

A. Yes.

Q. Thank you. This statement of yours which you wrote to Doctor Edwards on March 23, 1936, California Railroad

Commission, and which you read into the record, among other things you stated, "thus it would appear that the investment in transit shed facilities is primarily chargeable to the transit movement of cargo." What did you mean by that, what do you mean by it?

A. It might be possible that there would be no storage of goods whatever in a transit shed. The transit shed is constructed for the purpose of handling transit cargo primarily. In the case of inbound cargo the stevedores put the goods to their place of rest on the dock, delivery being made [fol. 1017] by a truck and the truck driver picks them up in that location and the expense of the whole facility in that case would be chargeable to the transit movement. Now, if the goods don't go out entirely within the free time period, some of them staying, one, two, three or four days, or possibly longer, the space is occupied for that length of time. There is no out of pocket expense for that storage. It is true that the space is occupied longer than the free time period, but the major portion of the expense for the facility would be charged against these other services.

Q. So that during this free time period, then, your income to offset your investment in those transit sheds is received from sources other than a demurrage or storage charge?

A. That's correct.

Q. Let us take the period beyond the free time. Your income during that period is not received from the services which you have suggested, but is received from storage or demurrage?

A. The income—

Q. (Interrupting) To offset this investment that you have described?

A. That's additional income in addition to the other revenues.

Q. Now, listen! You just a minute ago described to me that during the free time period your income is received [fol. 1018] from from sources other than storage or demurrage charges. Is that correct?

A. That's correct.

Q. So that that income during the free time period, the income to offset the investment, is an income from service charges and so on, not having to do with storage. Is that right?

A. That's correct.

Q. After the free time period the income that you receive to offset the investment is the income from demurrage for storage. Is that right?

A. Yes.

Q. Now, as I understand you also, it is your opinion that the charges for demurrage should not be based upon the idea of penalty but should be based upon the idea of income?

A. That's correct.

Q. So that in order to determine whether your charge is reasonable or non-discriminatory in respect to both cargo and your competitors, you must determine your investment and the cost of storing, must you not?

A. I would say the cost of storing principally.

Mr. Graham: Yes. I think that is all.

Examiner Basham: Any further questions?

Mr. Townsend: I have a few more questions.

By Mr. Townsend:

[fol. 1019] Q. Mr. McCarl, I don't think that this matter of free time is quite clear on the record and I should like to follow that a little further, please. Will you take, first, the case of the vessel which calls directly at the Port of Oakland? First, let us take outbound cargo. Will you please state when the free time period would commence and when it would end?

A. It commences with the first a. m. following the day on which the cargo is received, and ends when the vessels start to load.

Q. Provided, I believe you said, that the cargo is actually placed on the particular vessel for which it is intended?

A. Yes.

Q. Then, in the case of inbound cargo where there was a direct call vessel, when does the free time commence and end?

A. On the first a. m. following complete discharge of the vessel it starts, and ends at the expiration of ten days, excluding Sundays and holidays.

Q. Let us consider next the matter of trans-shipment cargo and take the case of an outbound movement. When would the free time commence and end?

A. Trans-shipment, both movements by water?

Q. Yes. By that I mean, let's assume that the cargo is assembled at the dock of the Port of Oakland and is handled,



[fol. 1020] we will say, by the Panama Pacific Line in inter-coastal trade. As I understand, that would be handled from Oakland to San Francisco by shallow draft vessel, from Oakland to San Francisco, would it not?

A. Yes.

Q. Will you take that cargo and describe when the free time would commence and end?

A. It would commence the first a. m. following the day of receipt at the terminal, and end with the—it would end ten days from that time. But if the barge delivered it during the free time period it would end when it was delivered to the barge. If the barge didn't pick it up until some later date after the expiration of the free time there would be some storage there.

Q. In other words, the time that is considered at the end of the demurrage period, so to speak, is when the shallow draft vessel actually lifts the cargo at the Port of Oakland?

A. That is, if that is during the free time period, the free time would end then.

Q. If that is after the free time do you charge the demurrage until the cargo is actually lifted by the shallow draft vessel?

A. It may come in for storage and get the ten days free time and then storage would be charged up until the time it was delivered to the barge. If it came in consigned to the Panama Pacific vessel the free time would be computed from [fol. 1021] the first day a. m. following the day of receipt. If the shipper sent it in too early and it was earlier than the free time period he would have to pay storage for the additional time.

Q. Well, now, then, is it not a fact that frequently this trans-shipment cargo is handled by shallow draft vessel transferred to San Francisco over a period of several days for a particular vessel?

A. Yes, that's possible. It might be partial delivery, so to speak.

Q. And is that the reason why in computing your demurrage charges on that particular type of cargo you end your period on the dock as of the time when the cargo is actually lifted by the shallow draft vessel?

A. Yes. In computing storage that would be considered as being delivered when it was delivered to the barge.

Q. Yes. But, as I understand it, in the case of a direct call vessel for the purpose of computing your storage charges, you have a different practice?

A. Well, maybe I wasn't entirely clear then in that first answer. When you said the free time was computed, it is also computed from the first a. m. following the date of delivery, but adding ten days exclusive of Sundays and holidays from that starting point. If the shipper has set his cargo in more than that free time period ahead of the scheduled loading of the vessel, then he would have to pay [fol. 1022] for that additional number of days.

Q. Then, as a matter of fact, don't you take the actual time when the cargo is commenced to be loaded on the direct call vessel, but you take some scheduled sailing date?

A. We take our scheduled sailing date in determining whether or not the cargo utilized the facility more than the free time period.

Q. And that scheduled sailing date is the one that is published by the Port of Oakland, you mean?

A. That is correct.

Q. And the Port of Oakland publishes a regular sailing schedule of boats that it expects to call at its port, does it not?

A. That is correct.

Q. So that scheduled sailing date is intended to be the date on which the vessel will leave the Port of Oakland after complete loading, is it?

A. No. It is when it will arrive to commence loading.

Q. When it will arrive to commence loading?

A. Commence loading, yes.

Q. With respect to your trans-shipments, what does your sailing schedule show?

A. It shows the latest time that the terminal can receive cargo for that vessel.

Q. But, then, in the case of the trans-shipment cargo, if [fol. 1023] the cargo is actually removed from the dock by the shallow draft vessel before that sailing schedule, as shown in your announced sailing schedule sheet, you would break off your computation of storage charges prior to the date shown in your sailing schedule?

A. Yes. When it is actually removed it is so considered.

Q. Well then, is it not a fact that in the case of this out-bound cargo you really have a different practice in the case of direct call service and in the case of trans-shipment?

A. No, I don't believe it is any different except that the direct call service—if a vessel requires more than one day in loading the time stops when the vessel starts to load.

Q. As I understand, it is not when the vessel starts to load; it is the theoretical time when it should have started to load; isn't that it, as shown in your advertised sailing schedule?

A. Yes. We figure that we can't charge a shipper for any errors that we might make in advising him of the scheduled loading dates of the vessel.

Q. How do you determine the sailing date that you show on your schedule?

A. We receive that advice from the steamship companies.

Q. How far ahead ordinarily?

[fol. 1024] A. I am just trying to look for it. I felt sure I had a copy someplace. It varies in the case of different steamship operators, between one and two months, six weeks.

Q. And aren't the actually sailing dates of those vessels generally changed from the time when they are published in your sailing schedule?

A. Sometimes changed; not generally.

Q. Well, isn't it a fact that there is a so-called "daily guide" in San Francisco that publishes the sailing schedules as of that day?

A. Yes.

Q. And those sailing schedules would frequently differ as the time approaches nearer the actual sailing date? They would differ from your sailing schedules?

A. Yes. There are changes, yes.

Q. So then, as a matter of fact, under your method of computing your storage charges and free time periods you adopt one or two months ahead of some theoretical sailing date and you stick to that, even though the sailing date may be changed by the steamship company several times before the actual sailing date?

A. Yes. We issue these schedules bi-weekly, or twice a month, and they are revised from time to time. In other words, the shippers are advised of the changes through the [fol. 1025] issuance of these bi-weekly. If they ship cargo in a long time ahead for storage or it is intended to go on a vessel, say, one or two months ahead, we would allow the free time period and then charge them for storage up to the time of actual delivery. We forget about the advertised

sailing date when cargo comes in a long time ahead of the actual loading.

Q. Do you mean by that, if somebody sends his cargo several months ahead of the advertised sailing date as advertised in your schedule, you would compute the storage charges, not up to the date shown in your actual sailing schedule but to some other time?

A. Actual time of delivery. We would allow him ten days free time and then we would charge him storage up to the time of delivery.

Q. Then, as a matter of fact, you don't have any hard and fast rule as to the period of time that will be used to determine the end of the storage period?

A. We use the ten-day—simply take the starting point and figure the ten days, and we have to take into consideration, of course, the advice that we had given the shippers. But, supposing, take as a specific instance, we advise that a vessel is due to load on the first of the month and he sends his cargo in on the 20th of the preceding month; say the vessel doesn't actually get there until the 3rd or 4th of the [fol. 1026] month. We figure that he is entitled to that additional free time by reason of the incorrect information that we gave them as to the scheduled loading date of the vessel.

Q. So then, as a matter of fact, you could actually allow these shippers longer free time than one of your competitors, for example, if you merely gave a little more lee-way to the date that you set forth in your scheduled sailing dates, could you not?

A. There is some differences between competitors; one, two days, possibly three days; a limited time. I think we all endeavor to list those accurately according to the information that is given us by the steamship operators.

Q. But the man who trans-ships his cargo actually pays until the cargo is really listed?

A. I can't see where there is any particular difference between the trans-shipment and the other.

Examiner Basham: I think the difference is clear on the record, if any.

By Mr. Townsend:

Q. Let me ask you one further question on this point: Don't you think it would be better in every instance to con-

sider the end of the storage period as being the time when the cargo is actually lifted from the dock, regardless of whether it is lifted by a direct call ship, or by a trans-shipment vessel?

[fol. 1027] A. Who would you collect the storage from by reason of error? Who would you hold responsible for that storage?

Q. Well, that is your question. I want to ask you my question.

A. I would say that I think the present practice is the proper one.

Q. Even though there is no hard and fast rule involved?

A. Well, I think it is hard and fast to the extent that all shippers are treated alike.

Examiner Basham: We shall take a short recess.

(At this time a short recess was taken, after which proceedings were resumed as follows:)

By Mr. Townsend:

Q. Mr. McCarl, I want to get your views with respect to the length of free time period which is proper. Let us take the case of inbound cargo and let us assume that certain cargo arrives at the Port of Oakland for a consignee who is located in Reno, Nevada, or Fresno, California. Isn't it a fact that what has to be done in connection with that cargo is substantially as follows: In the first place, the Port of Oakland must send advice to the consignee that the goods are on hand; then it is necessary for the consignee to make arrangements for the transportation of that cargo from the Port of Oakland to his place of business in either Reno or Fresno, and that may require arrangements with a [fol. 1028] motor truck operator; and, furthermore, it may be necessary for that company to make arrangements to pick up the documents at a bank. Isn't that substantially as is required?

A. Yes. There is a lot of detail there to be taken care of.

Q. Yes. If it is a fairly large shipment and if it is to move by motor truck, does it not frequently happen that that movement must take place over a period of a few days because of the fact that the capacity of the truck or of the truck operator is limited?

A. That's right.

Q. Is it your opinion that a 5-day free period is sufficient to take care of a movement of that character, or do you think that 10 days is a fairer free time period?

A. Personally I am in favor of the 10 days for all trade routes. It simplifies making quotations and there is ample time, I think, to cover all these requirements. I am personally in favor of the ten days. But for the sake of uniformity and give-and-take, we have expressed ourselves as being willing to go along with the others on some basis such as the San Francisco basis, but, personally, I prefer the ten days.

Q. Have you not found in your past experience that, as a matter of fact, it frequently does take ten days before the consignee removes the goods from the dock, or can move the goods from the dock, if he acts with reasonable speed? [fol. 1029] A. I think that is a fair amount of time.

Q. Have you found also that ten days is frequently required in the case of outbound cargo when you take into consideration the fact that his shipper may be located at a distance from the Port and may have a substantial amount of cargo to assemble and label and to ship by a motor truck operator with a limited capacity?

A. Yes, I think that is reasonable time.

Q. You referred to the matter of certain meetings of the Marine Terminal Association in connection with proposed increases in the rates of the private terminal operators around San Francisco bay. I am not sure that the record is quite clear on the procedure. Is it not a fact that in many instances the representatives of the Port of Oakland attend those meetings and discuss the proposed increases in the rates of the private operators?

A. That's correct; yes sir.

Q. Is it not also a further fact that after there has been that informal approval given by the various operators to the proposed increase of a private operator that the Port of Oakland signifies to the Railroad Commission of the State of California its approval of that proposed increase in writing?

A. Occasionally we have been asked to do that.

Q. You referred to the fact that there is a bean cleaner [fol. 1030] in Terminal Shed C, did you not?

A. Terminal Building C, we call it.

Q. How do you determine how much square foot area is used by the bean cleaner?



A. The cleaner itself?

A. Well, how much rental will be charged against that bean cleaner operator?

A. He always wants reserved for him a minimum amount of space, and then, as he requires additional space during the heavy season, additional space is allotted and the charge adjusted.

Q. Do you mean by that that you always set aside for this bean cleaner operator a definite amount of space for the coming month?

A. Well, for some period, not just for a month. He always wants a minimum amount of space.

Q. But you agree with him in advance as to how much space he will be charged for during a certain period in the future?

A. Yes, that's agreed in advance.

Q. It is agreed in advance. You don't go around from time to time and see how much he is actually using and charge him for that amount?

A. No. It is more agreed in advance.

Q. Well, do you make any check of how much he is actually using?

[fol. 1031] A. Oh, yes, yes. We have a man there every day.

Q. What if he uses more than the amount that you anticipate that he would need?

A. He is always charged for it. He never gets any space without charge.

Q. And he would be charged on a monthly basis for whatever he used in excess during a particular month?

A. That's right.

Mr. Scoll: It is on a square foot basis?

The Witness: It is on a square foot basis.

Mr. Townsend: That is all.

By Mr. Vaughan:

Q. Mr. McCarl, I want to straighten out something on which I am not clear. You stated last night that the Port of Oakland issues both negotiable and non-negotiable forms of warehouse receipts that are used as collateral for bank loans?

A. That's correct.

Q. Is that your usual practice?

A. We aren't called upon to issue that type of receipt very often but we do whenever it is requested.

Q. Upon request you will do it?

A. Yes.

Q. Otherwise you use that form of dock receipt. Is that true?

[fol. 1032] A. That's right; memorandum receipt.

Mr. Vaughan: That is all.

By Mr. Graham:

Q. Is that for goods in this warehouse C?

A. I believe I answered your question to the effect that I don't know that any receipt was definitely issued covering the goods. It came in by water and it was put over there and I don't recall that we had to issue any receipt. I know we didn't issue a so-called "warehouse receipt," either negotiable or non-negotiable.

Q. In response to Mr. Vaughan's question, or in line with it, would you, if you had some goods there and wanted it; I asked you that before, and I thought you said, No, you wouldn't.

A. I believe you said that was a conclusion and didn't require an answer.

Mr. Jones: You said it was hypothetical—

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Graham:

Q. What I want to know, Mr. McCarl, is what you would do in respect to the issuance of a document—any kind of a document—covering goods in this Warehouse C if somebody requested it.

[fol. 1033] A. If I was requested to issue a warehouse receipt I would take it up with our legal department to see whether or not we should issue such a receipt in view of the fact that the goods aren't definitely in our custody. I don't know just what his ruling would be.

Q. You mean in Warehouse C the goods are not in your custody?

A. When they are on a space rental basis.

Q. Is it not a fact that in Warehouse C that you take goods on this demurrage basis also?

A. Sometimes; yes sir.

Q. Yes. As to those goods, if the man came to you and asked you for a negotiable warehouse receipt or a comparable document, would you give it to him?

A. Oh, yes.

Q. Those goods are in your custody?

A. Yes.

Q. As to goods which are in Warehouse C or any other warehouse which is rented out on a space rental basis, a different situation may arise?

A. I am inclined to believe we would issue it.

Q. You would issue a negotiable warehouse receipt even in those cases?

A. We have enough control over it that I think we could.

Mr. Graham: I think that is all.

[fol. 1034] By Mr. Fullerton:

Q. Mr. McCarl, this morning you testified regarding the various charges, and I believe you testified that these charges were changed in accordance with conferences. I believe you used the term "agreements" with the other operators, both public and private. I think that you used the term "agreement" in a broad way and did not mean actually "agreement." As a matter of fact, when you want to change a charge—we will say, for instance, a carload rate—and you want to reduce it, that is, the Port of Oakland wants to reduce it, is it fair to say that first you clear with your own people and then you take it up with, say, the public port people, perhaps Stockton, San Francisco, as to whether there would be any objection to the proposed reduction; and if you do that, what is their reply to you?

A. In the case of different items of service we would confer with different parties. There is no written agreements of any kind. As a rule, most of the understandings are orally.

Q. Well, as a matter of fact, do these public bodies say to you: "We agree that there should be a reduction," or do they say, "It is all right if you want to put it in, we will go along with it," or perhaps one of them will say, "No, we think the present charge is in order, and if you must re-

duce it we won't go along with you,"? There is no formal [fol. 1035] agreement?

A. No, there is no formal agreement; not binding on anybody; just an understanding.

Q. And isn't that approximately the same thing with the private operators? On this same reduction in a carloading charge you go to the private operators—say, the Marine Terminal Association—and you tell them that you propose to reduce this particular charge, and then some of them, of the Association, may protest and the others may say, "Well, we will go along with you," and the result is that you know that you are not going to have too much trouble if you do reduce your charges, isn't that the way that it goes?

A. Something like that; just an understanding between the various parties.

Q. Well, you may know, for instance, Encinal does not favor the reduction in the charge and Howard is in favor of it, or vice versa, but you know that Encinal or Howard, whichever one does not like the reduction, is not going to cause you too much trouble so that you know that you are safe in making effective the reduction?

A. Something along that line.

Q. In other words, you don't have a formal or informal agreement with them that they will all reduce this charge?

A. Nothing formal.

Q. And, then, don't you have to go to the various operators [fol. 1036] in San Francisco and also the carloading contractors and others, and tell them what you propose to do before you put this charge into effect?

A. I would say the different services are handled in different channels. In the case of the carloading and car unloading, that is handled through the San Francisco Carloading Association, of which we are a member. That is usually a clearing house for the carloading and unloading items.

Q. But there is no formal or informal agreement by the various parties that they will all reduce this particular charge or increase it, as the case may be?

A. I would say nothing formal, nothing binding.

Q. You know that you have to get a certain amount of revenue, you have to increase the charge, or you know that you have to induce further cargo to come across your facilities, so you have to reduce it, and you go to bat to get

that change made and you explore these other bodies to see whether there is going to be too much opposition to it. Isn't that in effect what happens?

A. Well, I say we probably wouldn't make a change unless the rest of them do. There is some understanding, nothing formal about it, nothing binding, but we have some understanding.

Q. You want to be pretty sure that if you make the change [fol. 1037] there is not going to be retaliation by some of these public bodies?

A. That is right. We want to know there is going to be no competition on rates.

Q. But there is no agreement?

A. No agreement.

Q. And the understanding you referred to does not amount to an agreement by the other parties?

A. I wouldn't say there is an agreement.

Q. Mr. McCarl, you stated that you felt that a penalty demurrage was all right at a new port?

A. How is that?

Mr. Jones: I don't think there is any such testimony.

Mr. Fullerton: He said that in answer to a question by Mr. Graham.

The Witness: Just the other way, I believe.

By Mr. Fullerton:

Q. Pardon me. I had just exactly the reverse. You said that a penalty demurrage was in order excepting at a new port.

A. Well, I don't think I put it that way. I say that I don't see why a new port building up its business should want to make a demurrage, storage rate a penalty rate. It is just a question of getting all the revenue they can get. [fol. 1038] taking the—putting into effect the service without what you call a "penalty" rate to drive the business away.

Q. After you cease to be a new port and the tonnage is coming through well-worn channels, do you feel it is still in order to put a penalty demurrage in effect?

A. I don't see why it should be called a "penalty" demurrage. I don't see the necessity for the penalty demurrage.

Q. You think in any case, then, there is no necessity for a demurrage charge, whether you call it "wharf storage" or "wharf demurrage," high enough to compel cargo to move off of your facility?

A. It depends on the conditions. If you need your space, then you don't want the storage business. If you don't need your space, then it is desirable to get some revenue from storage. It all depends on conditions.

Q. Well, am I correct in saying that you have testified to the effect that the Port of Oakland has a wharf storage charge that is not a penalty charge?

A. That's correct.

Q. Is the level of that charge set to induce revenue to the Port of Oakland?

A. Yes, but we are not responsible for the present charges. Those are all worked out in conjunction with the other operators. They may be increased somewhat and [fol. 1039] thereby increase the revenues without driving the business away.

Q. You consider that the Port of Oakland is a new port?

A. Fairly new.

Q. How old is it, Mr. McCarl?

A. Well, the Board of Port Commissioners was created in 1926.

Mr. Jones: 7.

The Witness: 1927.

By Mr. Fullerton:

Q. How does its age compare with the other ports and terminals about the Bay? Take Encinal, for instance.

A. Well, I wouldn't consider them a port, particularly. The major ports are much older up and down the Coast. There is San Francisco, Los Angeles, Portland, Seattle, Tacoma, Vancouver, and it takes a long time to develop a port and particularly in the situation that we are here with San Francisco an old established port.

Q. Let us consider that the facilities I am referring to are just the wharves and the sheds at Oakland. How old are those?

A. Well, the sheds constructed by the Board of Port Commissioners, are within the last 13 years.



Q. How does the age of those facilities compare with the age of similar facilities that are operated in San Francisco Bay and its tributaries?

[fol. 1040] A. They are much newer than most of the other facilities.

Q. Do you know when the Encinal facilities were constructed?

A. I think in 1925; was it?

Q. One or two years prior to the construction of the Oakland facilities?

A. That's right.

Q. And Stockton?

A. After the Oakland facilities.

Q. And Parr-Richmond?

A. The new facilities were constructed after some of the Oakland facilities.

Q. So that, so far as the age of facilities is concerned, the Oakland facilities are about as old as any of them?

A. But none of those you mentioned are called "major ports." We are competing with the major ports. We expect to be a major port and we have a long way to go yet to reach our goal.

Q. So your competition with the local terminals is merely incidental to another program? In other words, you are aiming at Los Angeles, Portland and Seattle?

A. Yes; a much bigger program than we have at the present time.

Q. Mr. McCarl; you stated a little while ago that you found that there was a certain laxity of assessments in storage charges and also in the granting of free time. Could [fol. 1041] you give some example of those that you found?

A. Well, I know it was done before I came with the Port of Oakland, which was some 13 years ago. I know it was very prevalent in Portland and Seattle, in the northwest.

Q. You came to Oakland when?

A. In 1927.

Q. 1927?

A. And at that time——

Examiner Basham: What bearing does that have on this proceeding? After all, we are interested in present practices.

• By Mr. Fullerton:

Q. Can you give any instances of present practices?

A. Present?

Examiner Basham: Yes.

A. (Continuing:) I don't know of any specific violations except that we know that it is a very controversial subject up and down the coast. They have a great deal of trouble with it along the coast. We always hear rumors of violations of free time storage periods.

By Mr. Fullerton:

Q. I did not understand that your statement that you found this laxity referred to a period of perhaps 13 or more years ago. Do you know of any examples of such laxity within the last five, six years?

[fol. 1042] A. Around the Bay area I don't know of anything definite enough, but it has been discussed at a number of our terminal operator meetings in recent years, as to whether or not demurrage charges are always assessed in San Francisco. Under the system of the wharfingers going around to the various facilities, where they always pick up these items that should be assessed, there has always been a question of whether they do that or not. Just more recently down in Los Angeles, I believe, they had considerable trouble in the way of steamship companies not passing on to shippers demurrage charges which were assessed against them, which showed that there was a difference in the practices as between steamship companies.

Q. Mr. McCarl, is it fair to say that you know of no specific example where there has been a laxity in assessment of storage charges or the granting of free time within the last five or six years, in the San Francisco Bay area?

A. I don't know of any specific instance.

Q. And that your statement that you found this referred only to a period, say, 13 to 15 years ago?

A. Back in that time I think I can safely and very definitely say that there was a great deal of laxity. We helped to straighten that up.

Q. Of course, that was prior to the time that the California Railroad Commission took jurisdiction over the various [fol. 1043] privately-owned terminals in the San Francisco Bay area? Is that not correct?

A. That's correct.

Q. Do you know of any such laxity since the California Railroad Commission took jurisdiction over the terminals?

Mr. Jones: Mr. Examiner, I think that the examination has been unduly prolonged, going into issues that have no proper place here. I think Mr. McCarl merely mentioned that in passing last night, that some time ago at the time the Board of Port Commissioners started there was this rather chaotic condition. There is no charge against any terminal operator on our part, and I think he is the only witness who has mentioned that, any present violation; I don't think that it has any relevancy.

Examiner Basham: I don't think that we need to argue. I don't think the witness knows of any such incidents.

The Witness: I so stated.

Mr. Fullerton: I merely wanted to correct the impression that was made by a statement this morning, Mr. Examiner.

By Mr. Fullerton:

Q. Mr. McCarl have you ever high piled freight at the Port of Oakland and then had this same freight move within the free time after one or two days of demurrage?

A. We have had such cases, yes.

[fol. 1044] Q. And have you had occasion where the Port of Oakland has paid for this high piling?

A. They always paid for it.

Q. Has the wharf demurrage revenue received from the cargo, assuming that it was one or two days after the end of the free time, been sufficient to pay the cost of the physical handling of the high piling?

Mr. Jones: I instruct Mr. McCarl not to answer that question.

Mr. Fullerton: On what ground?

Mr. Jones: I am not assigning any ground.

Examiner Basham: What was the question?

(The pending question was read by the reporter as above recorded.)

Examiner Basham: I think the witness should answer.

Mr. Jones: I instruct him not to answer.

Mr. Fullerton: May I consider that you have instructed him to answer?

Examiner Basham: Yes.

By Mr. Fullerton:

Q. Mr. McCarl, in the case that this freight has been moved one or two days after the free time, has there been a wharf demurrage or a wharf storage charge assessed against the freight?

[fol. 1045] A. If there is any incurred it was assessed.

Q. Can you explain your answer, "if there is any incurred"? Isn't it necessarily incurred after the free time?

A. I think I mentioned about a vessel being delayed, or something along that line.

Q. Take a normal case. There has been no delay of the vessel.

A. If the charge is incurred then it would be assessed.

Q. If it does not fall within one of those exceptions, a charge is incurred under your tariffs?

A. Yes, that's right.

Q. And this is, say, one or two days after the expiration of the free time. If it is assessed in accordance with your tariff is it collected by the Port of Oakland?

A. Yes, certainly.

Q. And what would this amount to in dollars and cents for a ton of canned goods?

A. For one ton of canned goods?

Q. Yes.

A. You said one day?

Q. Yes.

A. Our rates is 2 cents a ton a day.

Mr. Differding: Let us have the record straight. It is one and a quarter cents a ton a day.

The Witness: Pardon me. It is one and a quarter cents [fol. 1046] a ton a day in that particular commodity.

By Mr. Fullerton:

Q. What would be the cost of high piling this?

Mr. Jones: The same instruction, Mr. McCarl.

A. We don't high pile.

By Mr. Fullerton:

Q. I thought you stated that there had been such instances.

A. Without going into the matter of costs, may I state that we don't make any practice of high piling. That is not a problem with us.

Mr. Jones: Mr. Fullerton, the statement of high piling was with regard to pineapple, I think.

By Mr. Fullerton:

Q. However, high piled canned goods other than pineapple?

A. There might be some instances.

Q. However, have you ever piled anything that has moved out within one or two, or perhaps three days after the expiration of high piling?

A. I don't think so, outside of pineapple. None that I recall.

Q. You don't recall any instance?

A. Not other than pineapple.

Q. Is it unreasonable to assume that there might be an instance. You stated that you believe that your facilities are underbuilt and it is conceivable that at times they are [fol. 1047] congested. Is it unreasonable to believe that other commodities other than pineapple may from time to time be high piled and may move out within one or two or three days at the expiration of free time?

A. That might require some explanation. Our facilities are not at one place. We have different facilities and this temporary congestion, if you might call it that, occurred at one of the facilities where we were considering the possibility of adding to those facilities. But congestion hasn't been any problem with us.

Q. To go back to my question: Is it unreasonable to believe that such an instance may happen some time?

A. Well, if it happened very much we would add to our facilities.

Examiner Basham: Why don't you answer the question?

The Witness: It may happen.

By Mr. Fullerton:

Q. And if it does happen, under your tariffs, would there be a wharf demurrage or wharf storage charge assessed for that one, two, or three days?

Mr. Jones: That has been asked and answered half a dozen times.

Mr. Fullerton: The witness seems to be a little evasive and I would like to find out where we stand on this.

[fol. 1048] Mr. Jones: I don't think there is any evasion on this.

A. There is no intention of being evasive. I think I answered, if the storage charges are incurred they are incurred and collected.

By Mr. Fullerton:

Q. Where cargo has been high piled and has been moved within one, two or three days after the expiration of free time, is a wharf storage charge incurred under your tariffs?

A. Unless, as I stated before.

Q. Barring the exceptions set out in your tariff?

A. Yes.

Q. And, if it is so incurred, is it assessed and collected?

A. Yes.

Q. And in the case of canned goods this amounts to what per ton?

A. One and a quarter cents per ton per day.

Q. What is the charge under your tariffs if there is a charge, or, if there is no such charge, what is the cost of high piling canned goods?

Mr. Jones: Just a minute. Is that question in the alternative or not?

Mr. Fullerton: I will reframe the question.

By Mr. Fullerton:

Q. What is the cost of high piling a ton of canned goods?

[fol. 1049] Mr. Jones: The same instructions, Mr. McCarl.

Examiner Basham: The witness should answer.

Mr. Jones: I repeat the instruction.

By Mr. Fullerton:

Q. Mr. McCarl, you stated yesterday that certain wharf demurrage rates in the northwest have been changed from a period basis to a daily basis because of the difficulty of collecting period basis charges. Is that correct?

A. A long time back, yes.

Q. Were those rates on file with any regulatory body?



A. No.

Q. And I assume that when you say "a long time back," that you are referring to, perhaps, 1925, '26, '27, or some place in there?

A. Along in there.

Q. Prior to your arrival at the Port of Oakland?

A. That's right.

Q. Is it your belief that daily rates on wharf demurrage are proper because of the difficulty of collecting period rates when the freight only stays two or three days over the period?

A. I would say the question of justification—period rates, I don't think you are justified for short time occupancy. I think the public interests have to be considered there, what is a proper charge for such service.

[fol. 1050] Q. Do you believe that the difficulty of collecting a period rate when the goods only stays for a short time is the principal reason why daily rates should be charged?

A. I don't say that it is the principal as we try to make our rates what we consider fair and equitable to the public. And if they were unfair it would naturally follow we would have difficulty in collecting them. We have had a hard time to argue, or we would have a hard time to argue that they should be paid.

Q. Perhaps I misunderstood your testimony. Would you give me the reason why you believe that the period rate is unfair to the public?

A. I don't think we should charge anybody for the service that isn't incurred. And if a lot of goods comes in and it is mostly delivered within the free time period, part of it goes out on the 10th day and there is no storage, and part of it goes out, on, say,—the balance goes out, say, on the 11th day, I don't see why we should charge anybody for 15 days or 30 days or any long period. I think we should just charge them for the day that that space is occupied.

Q. Is the difficulty of collecting period storage charges one of the reasons that you advocate a daily charge?

A. That's one of the reasons.

Q. Are you familiar with the fact that warehousemen [fol. 1051] may have the same difficulty in collecting full storage charges when the cargo is only held for two or three days?

A. I should think that they would have.

Mr. Jones: I object to the question as argumentative.

Mr. Fullerton: This is an expert on the subject, I believe.

Mr. Jones.

Examiner Basham: He has not so qualified him as an expert. I think it is argumentative.

Mr. Fullerton: I will withdraw my question.

The Witness: I think I drew some distinction between—

Examiner Basham: Never mind.

Mr. Jones: There is no question, Mr. McCarl.

By Mr. Fullerton:

Q. Mr. McCarl, you have submitted a list of the leases and licenses from the Port of Oakland to various lessees, and licensees, exhibit No. 102. I should like to ask you some questions regarding these various leases and licenses. Mr. McCarl, can you give me the terms of the Atlas-Imperial Diesel Engine Company lease?

Mr. Jones: For what purpose?

Mr. Fullerton: I want to know the terms.

Mr. Jones: What is the purpose? In other words, do you want to encumber this record with the terms of every one [fol. 1052] of those 75 or 100 leases that are referred to in that list?

Mr. Fullerton: That is exactly what I want to do, only I wouldn't use the term "encumber."

Mr. Jones: Mr. Examiner, I submit that we are going to undue length here. We are serving no useful purpose at all. This witness has been on the stand for hours and hours, going over the same ground. The leases are in evidence. They are available for counsel and why should Mr. McCarl be called upon to explain any of the terms now? They speak for themselves.

Mr. Fullerton: Mr. Examiner, it is our belief that these leases, which Mr. Jones has stipulated were entered into to induce cargo to move over the Port of Oakland, are also at non-compensatory rates, and I would like to go into that subject.

Mr. Jones: The amount of the rental is in each of the leases; the area is shown, and you can figure out for yourself whether or not the per square foot basis is compensatory. Mr. McCarl is certainly not a real estate expert.

Mr. Fullerton: Then will you agree to introduce copies of each of these leases?

Mr. Jones: I shall not. I am willing to give you, however, the rental and the area if you want that. You have the form on which these leases are drawn and the special leases are [fol. 1053] in evidence. If you want that information I will give it to you.

Examiner Basham: Off the record, please.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Fullerton:

Q. Mr. McCarl, should as a result of this hearing an order issue from the Maritime Commission relating to and regulating the practices of the terminal operators in the San Francisco Bay area, do you believe that the Port of Oakland and the other municipally owned and operated terminals should be exempt from such order?

Mr. Jones: How can this witness answer that question?

Mr. Fullerton: This is the Assistant Traffic Manager.

Mr. Jones: And if he doesn't believe it, what difference does it make?

Examiner Basham: That is what I say. I don't think the question is relevant.

Mr. Fullerton: I will withdraw the question. That is all.

Mr. Scoll: I would like to ask one or two questions to clarify the record.

Redirect examination.

[fol. 1054] By Mr. Scoll:

Q. In response to certain questions, you testified that you knew of no recent laxities in the application of wharf storage or wharf demurrage charges or in the granting of free time in the San Francisco Bay area. Do you know of a recent voyage of the Lena Luckenbach which arrived at Eastbay terminals, several days late during January of 1940, about January the 20th?

A. I understand that she was late, yes.

Q. Was she late calling at the Oakland terminal?

A. I believe she was.

Q. Which of the terminals operated by the Port of Oakland did she call at?

A. I am not just quite sure but it would be the Grove Street Terminal inbound and Outer Harbor Terminal outbound. I don't just recall the specific instance except to hear something about it being delayed. There are so many vessels, I just don't recall that particular one.

Q. Well then, are we to take it that you don't know whether the Lena Luckenbach was late at Outer Harbor or Grove Street?

A. I wouldn't say definitely that I know it was late at that facility.

Q. Well, do you know, or don't you know?

A. I can get the information for you.

[fol. 1055] Mr. Jones: We can check on that, Mr. Scoll.

By Mr. Scoll:

Q. If the Lena Luckenbach was late would a demurrage charge have been assessed on goods waiting there for her or waiting there to load into that vessel for the days she was late?

A. If we advised the shippers in our sailing schedule that it was scheduled to be there on a certain date and goods were sent in on the strength of that information, we would then protect the shipper to that extent, if the vessel was late.

Q. You don't refer to that protection, then as a laxity?

A. No, no. I don't think that is any laxity.

Q. What specific instances do you refer to when you use the term "laxity", and I wish you would be as specific as possible.

A. When I used that term "laxity" I had in mind going back several years. I know it was very lax in the north west because they didn't assess the charges. Sometime they give 30, 60 and longer free time periods. When I first came down here in the Bay area, I was informed that, particularly in so far as storage was concerned, there was unlimited laxity. As a matter of fact, tonnage was obtained by waiving of storage charges. One of the lessees of the City—I think it was a lessee—the Lawrence Terminal Company, didn't have a bona fide lease.

[fol. 1056] Q. Of what city?

A. Of the City of Oakland, —

Examiner Basham: I think we are getting far afield here.

The Witness: Is that answering the question as he put it?

By Mr. Scoll:

Q. Well, you have added a lot to the answer, more than I expected.

A. That is what I had in mind.

Q. When you stated that you protect shippers, or consignees under the schedule of steamer sailings and arrivals which you publish, you mean, do you not, that you will only assess charges based on the dates contained in that schedule. Isn't that correct?

A. The schedules are changed from time to time.

Mr. Scoll: No, excuse me. Please read the question.

(The question referred to was read by the reporter as above recorded.)

Mr. Jones: You said, "that" schedule. I think he has a right to answer the way he did.

Mr. Scoll: "Such" schedules.

[fol. 1057] The Witness: Based upon the latest schedule. If the shipper routed his cargo on the strength of that schedule, if it is in storage, it would be different.

Mr. Scoll: Thank you. I would like to offer at this time for the record "Port of Oakland Steamer Sailings and Arrivals June 15, 1939, Schedule No. 234."

By Mr. Scoll:

Q. That is a specimen of your schedule, is it not, Mr. McCarl?

A. Yes.

Mr. Scoll: I would like to offer it for the record.

Mr. Graham: Could I interrupt for one question right here, Mr. Scoll?

Mr. Scoll: Surely.

Mr. Graham: You say that the shipper ships or delivers his cargo in reliance upon a schedule. How do you know which schedule he relies on if you change them?

The Witness: It depends upon when the cargo would come in.

Mr. Graham: In other words, if it came in on the third of February and you had issued a schedule on the second

of February you would assume that he was relying on the second of February schedule.

The Witness: If he had time to receive that.

Mr. Graham: What is that?

[fol. 1058] The Witness: If he had time to receive that schedule.

Mr. Graham: Let us say that he received the first schedule on the 21st of January and the second schedule on the 2nd of February.

A. Yes.

Mr. Graham: You would assume that he was relying on the 2nd of February schedule and not the schedule he received on the 21st of January?

The Witness: Yes.

Mr. Graham: That is how you work these schedules dates and the reliance on these schedules?

The Witness: Yes. I think the other operators are uniform on that.

Examiner Basham: What is the purpose of the exhibit, Mr. Scoll? What is intended to be proven by it?

Mr. Scoll: The exhibit has information which I think will serve to clarify this question in respect to when the charges are assessed. Taken in connection with Mr. McCarl's testimony, I think it would serve to clarify the record considerably.

Examiner Basham: It will be received as exhibit 104.

(The sailing schedule referred to was marked "Commission's Exhibit 104" and received in evidence.)

[fol. 1059] Mr. Vaughan: Did you finish, Mr. Scoll?

Mr. Scoll: Yes.

Mr. Vaughan: I just want to clear up a matter.

#### Recross-examination.

By Mr. Vaughan:

Q. I understood you to say that you did not believe that storage rates based upon a period of time were fair. Is it not true that all of these leases that you have with the Atlas Diesel, Libby, McNeil & Libby, Rosenberg Bros., and down the line are all on a period of a monthly basis?

A. That is not transit shed storage. I am talking about transit shed storage when I am talking about whether a period basis is fair or unfair.



Q. As a matter of fact, Warehouse C is on the basis of 3 cents per month, is it not?

A. If the owner of the goods elects to use that basis.

Q. It is still stored, though, is it not?

A. Long time storage, yes.

Q. And then to your knowledge doesn't the entire warehouse industry recognize that monthly storage for period storage is a fair method of assessing storage charges?

A. The goods are moved into the warehouse with that understanding and for the purpose of leaving the goods for some time.

Mr. Differding: Are you through, Mr. Vaughan?  
[fol. 1060] Mr. Vaughan: Just a minute.

By Mr. Vaughan:

Q. Does your tenant on dried beans pay you a monthly storage rate?

A. The Oakland Bean Cleaning Company?

Q. Yes.

A. He pays at the rate of three cents per square foot a month.

Q. And he operates as a public utility, does he not?

A. That is my understanding, yes.

Q. And he charges his patrons on a monthly storage basis, does he not?

A. That is my understanding.

Mr. Vaughan: That is all.

By Mr. Graham:

Q. What is the difference as to whether you store that fellow's beans or he stores them in that facility or on the transit shed in respect to the basis of the charge? That is what I can't get through my head.

A. When the goods are shipped in the transit sheds they aren't shipped there primarily for storage. They are shipped there for transit movement. They may go out within the free time period and there is no storage incurred, and the only expense of the operator is the space that is occupied for that additional time. They were sent there for long time [fol. 1061] storage. They pay no in or out charges. The transportation company takes care of these labor charges in getting the goods in and out. It is entirely different from a warehouse operation.

Q. Doesn't the fact remain, Mr. McCarl, that on those goods that you in fact store in a transit shed, that they are exactly in the same category as those goods that are stored in your non-transit sheds? They are stored goods, aren't they?

A. They are stored goods if they stay over the free time period.

Mr. Graham: That is all right.

Examiner Basham: Further questions?

Mr. Differding: Are you through, Mr. Graham?

Mr. Graham: Yes.

Redirect examination.

By Mr. Differding:

Q. Mr. McCarl, can you say whether or not your tonnage on wharf demurrage has increased since 1935 up to and including 1939?

A. I believe all of our tonnage has increased, and I think that would probably hold true of more goods in storage due to the fact that we have had greater volume of shipping.

Q. And then, likewise, your revenue from wharf demurrage or storage, you described, is likewise increased?

A. That would be my guess: That it has, without having the actual figures.

[fol. 1062] Q. During the same period of time, is it not true that your labor costs involved—that is, in what transferring you may do, however small,—or the labor furnished in operating high-piling equipment, has increased since 1935?

A. Yes.

Q. And similarly the cost of the clerks employed to make these deliveries, whether there are half a dozen or fifty, have likewise increased?

A. Yes.

Mr. Differding: Are you willing to stipulate, Mr. Jones, that all costs of operation have increased for the dock labor, clerking and overhead expense, plus the cost of materials and supplies and, correspondingly, a decrease in the efficiency of that labor and clerking?

Mr. Jones: I think that is a fair stipulation: Yes.

Mr. Differding: I am satisfied with that.

By Mr. Differding:

Q. Referring now to those items mentioned by Mr. Vaughan last night, Mr. McCarl, such as issuing railroad bills of lading, handling C. O. D. charges, issuing receipts for each specific shipment and also rendering detailed statements of small deliveries from a lot of cargo, for which you make no charge, those are the costs to which I called your attention last night, are they not, as being indicated on [fol. 1063] pages 100 and 101 of exhibit No. 61?

A. Yes, those are included.

Q. It is a fact also, is it, Mr. McCarl, that your rate on general merchandise N. O. S. covers more specific commodities or more different commodities than any other item in your tariff covering wharf demurrage?

A. Yes.

Q. And that rate remains the same today as it did in 1929 when the Railroad Commission first exercised jurisdiction over these private operators?

A. That is the same rate.

Q. Two cents per ton per day?

A. Yes, that's right.

Q. I would like to call your attention to your current tariff, exhibit 71, in which there have been some departures from that merchandise N. O. S. rate as it was published in 1929 and as effective today. Taking, for example, excelsior in bales at 7 cents per ton per day and under the heading of "Paper and paper articles, napkins and towels," seven cents per ton per day. What were the principal factors that justified you in increasing those charges so much higher than your general merchandise N. O. S. rate?

A. The principal knowledge that they were faulty and required considerable space, and through discussions we felt [fol. 1064] that the N. O. S. rates were too low and should put in commodity rates at the higher levels. Some rates on other commodities have been increased and these particular ones have been increased.

Q. And in addition to the use of more than the average amount of floor space, is it not also true that the numerous small deliveries required in those types of commodities was the additional factor?

A. I wouldn't say entirely. Excelsior, I don't believe we have handled any of that. What were the other items mentioned?

Q. But you have actually handled paper napkins and towels, have you not?

A. Those always have been expensive to handle. I don't know as there has been more added service than we used to give, but they have always been expensive to handle.

Q. But here, nevertheless, you have reflected that additional service by advancing your charges above the merchandise N. O. S. rate of 2 cents per ton per day, have you not?

A. Yes, that is correct. And we have also given consideration to increasing the N. O. S. rate, but we can't do that unless all of our competitors do it at the same time.

Q. It is true, is it, that Encinal, Howard and Parr-Richmond and yourself all have two cents per ton per day?

A. That is correct.

[fol. 1065] Q. And also the Port of Stockton at 2 cents per ton per day?

A. Yes.

Q. And your competition that you have in mind is actually the piers in San Francisco, isn't that right?

A. Well, I think those that you mentioned and, in addition, the San Francisco piers.

Q. Well, just a minute. They have the two-cents per ton per day rate now. What is the reason that you can't get that charge above 2 cents per ton per day? Have they indicated that they would not go along with you? That is, excluding San Francisco.

A. Well, we have had conferences principally between the East Bay terminal operators, I think possibly excluding Stockton, and we considered increasing that rate some time back. But we didn't finally do it, because I don't think the matter was discussed fully with Stockton by the party that was to discuss it. I think it was the manager or party in charge of the Marine Terminal Association at that time that was to discuss it with Stockton.

Q. Did you hear Colonel Allin's testimony here yesterday, that he thought 5 cents per ton per day on the merchandise N. O. S. rates—I believe he named that commodity—was in his opinion appropriate? I believe he started out with 6 cents and then brought it down to 5 cents. Does that somewhat meet your idea as to what the proper charge [fol. 1066] would be for merchandise N. O. S.?

A. No, I don't think so. I think Colonel Allin has greatly changed his views recently from what they were recently.

Q. Do you think he has changed them since yesterday?

A. He has certainly changed them from what I understood they were a little time ago.

Q. What was your opinion on that?

Mr. Jones: I believe that question was asked by Mr. Graham or someone else this morning, Mr. Differding. The witness said it require- a lot of study and he is not prepared at this time to give it.

By Mr. Differding:

Q. Is that your answer?

A. Yes. I think it would require a lot of study to determine that question.

Q. Then the other commodities in that tariff which reflect a charge higher than the N. O. S. rate in your tariff, the same factors that you previously referred to, the principal ones that you testified to that are above that N. O. S. rate; is that correct? I will restate the question.

Examiner Basham: Strike it out.

By Mr. Differding:

Q. The other commodities, other than paper napkins and towels and excelsior in bales, which have a charge higher [fol. 1067] than merchandise N. O. S., have been given the same consideration that you have previously described in your answers to excelsior and bales and paper napkins and towels; is that correct? I call your attention specifically to wall board N. O. S. and veneer N. O. S. Do the same factors apply to that as previously you said applied to excelsior?

A. Yes.

Q. Is it also true of other paper articles, such as tissue, boxes, bags, wrapping paper?

A. Yes.

Q. Also wool in bales?

A. Yes. Our competition increased its rates on that commodity, which enabled us to increase ours, too.

Q. And, generally, if your competition is willing to go along with some other increases you would have no objection?

A. I think those could be worked out so that some increases could be made.

Mr. Differding: That is all I have. Thank you, Mr. McCarl.

Recross-examination.

By Mr. Townsend:

Q. Mr. McCarl, do you agree with the statement made by Colonel Allin when he was on the witness stand that the Port of Stockton and representatives of the Port of Oakland do not discuss proposed rates and tariff changes in advance?

[fol. 1068]. A. We haven't made a practice of discussing those with Stockton. We have had some meetings in years gone by. I think Stockton sat in with us and we discussed certain items, but not recently.

Q. That has been some time ago?

A. Yes.

Q. At the meetings of the Marine Terminal Association which have been attended by representatives of the Port of Oakland, have representatives of the Port of Stockton been present?

A. I don't recall any.

Mr. Townsend: That is all.

Examiner Basham: Are there any further questions?

Mr. Jones: I have one.

By Mr. Jones:

Q. Mr. McCarl, is it not a fact that all of these terminal facilities of the City of Oakland, the Board of Port Commissioners, as well as all these leased facilities which are referred to in the list, which has been received as exhibit 103, the leases and license agreements, are on tidelands that were conveyed to the City of Oakland by the State of California?

A. That is my understanding there.

Mr. Jones: That is all.

Examiner Basham: You are excused.

(Witness excused.)

(Whereupon at 12:30 p. m. a recess was taken until 1:30 p. m. of the same day.)



[fol. 1069] Afternoon Session 1:30 P. M.

Examiner Basham: Come to order, please.

Mr. Differding: I will call Mr. Gates.

Mark H. Gates resumed the stand and testified further as follows:

Direct examination.

By Mr. Differding:

Q. You have previously been sworn, Mr. Gates?

A. I have.

Q. Would you state again for the record how long you have been employed by the Board of State Highway Commissioners at San Francisco, Mr. Gates?

A. A little over twelve years.

Q. Did you hear the testimony of Mr. McCarl yesterday afternoon going back to 1927 at which time he stated in answer to a question that there was in effect at the Bay terminals a charge of 12-1/2 cents per ton for seven days, which was taken from the tariff of the Board of State Harbor Commissioners at San Francisco, for bulkhead demurrage?

A. Yes. I think I heard him make that statement.

Q. This bulkhead demurrage, to which frequent reference has been made, is what, Mr. Gates?

[fol. 1070] A. Well, it is a charge that is made for cargo on the regular transit pier under certain conditions.

Q. May I suggest that when you refer to your tariff, that is exhibit 64 of record in this proceeding.

A. 64.

Mr. Graham: You mean that is the December 1, 1925 tariff?

Mr. Differding: Yes, amended as of December 1, 1939.

The Witness: On page 19 of exhibit 64, starting at the bottom of the page, it says:

"When space is available and the prompt loading and discharging of a vessel will in no manner be interfered with, cargo as described below may, at discretion of the Chief Wharfinger, be held at demurrage rates of 12-1/2 cents per ton, weight or measurement, whichever will give the greater revenue, for each seven days or part thereof; Sun-

days and Holidays not excepted (one ton minimum) (Lumber may be charged per 1000 feet, board measure.)"

It continues on page 20:

"1. All cargo that is not removed by vessel for which assembled; such cargo as rejected, left over, or overlooked (Until stored, such cargo is subject to wharf demurrage, commencing from date vessel finishes loading or leaves pier, [fol. 1071] at rate of 2-1/2 cents per ton per day for the first five days, five cents per ton per day for the next five days, and ten cents per ton per day for each succeeding day thereafter.)

"2. Outbound cargo in transit received prior to assembling date of vessel. Charge to commence when cargo was placed on pier and continue until receiving date of vessel.

"3. Inbound cargo in transit pending final disposition. Charge to commence at expiration of free period and to continue until cargo is lifted or removed from pier."

By Mr. Differding:

Q. Now, first I would like to have you state your interpretation of the words "In transit" and used in Condition No. 3, which you have just read, and which appears in a number of other places in your tariff, covering wharf demurrage charges at pages 18 to 20, inclusive.

A. Well, in this case I take it to mean cargo that is not for local delivery. It is either coming from or going to other point.

Q. You mean "Local delivery" within the confines of the boundaries of the City and County of San Francisco?

A. Yes.

Q. Is that the way that the Board of State Harbor Commissioners has always construed it?

A. Yes.

Q. Would you state for how many years prior to 1927 was this bulkhead basis of demurrage available when the Chief Wharfinger exercised his discretion in applying the charge?

A. No, I couldn't tell you how long.

Q. Is it a number of years prior to 1927?

A. I think so, but I am not certain. I don't know how long before that.

Q. This particular item, as you have read it into the record, Mr. Gates, calls for the application of the charge

on a weight or measurement basis, whichever will give the greater revenue. How is that determined?

A. Well, the Chief Wharfinger, knows pretty well what commodities will yield the greater revenue by either one method or the other.

Q. By that do you mean that you have built up a comparison of weights or measurements on various types of commodities by test, checks over a period of time?

A. I think that's the answer, yes.

Q. Can you state of your own knowledge that this test of weight of measurement, whichever will yield the greater revenue, has always applied when bulkhead demurrage was assessed?

A. That is the practice, yes.

[fol. 1073] Q. I understand Mr. Geary, the Chief Wharfinger of the State Board of Harbor Commissioners is here and will be the next witness. I will reserve questions as to how he exercises his discretion. He is the best person qualified to do so, Mr. Gates?

A. Well, probably so. However, I think I can tell you pretty well how he exercises his discretion.

Q. All right.

A. You might supplement that by his testimony.

Q. All right. Will you go ahead and explain "when space is available and the prompt loading and discharging of a vessel will in no manner be interfered with, cargo as described below may, at discretion of the Chief Wharfinger," the Chief Wharfinger exercises his discretion as to the granting of the bulkhead basis of wharf demurrage?

A. Well, it depends entirely on that question as to whether the granting of so-called bulkhead demurrage will interfere with the loading of a vessel. The actual procedure is this: That he does not extend this rate except the steamship company on whose pier—that is, on the pier assigned to the steamship company—unless the steamship company either applies for it itself or approves the application of the shipper.

Q. Now, what is the ordinary procedure followed by the Chief Wharfinger in granting this? In other words, if it [fol. 1074] is the case of the steamship company seeking this permission they make a written request of the Chief Wharfinger; is that correct?

A. It isn't always the steamship company that seeks the granting of this rate.

Q. Confining it, first, to the steamship company's request for their own convenience?

A. Well, the reason that we require the approval of the steamship company is because we don't want to tie up their operations.

Q. Well, now, taking the case where this bulkhead basis is entirely for the benefit of the steamship company, what is their procedure in advising you of their desire.

A. It is not for the benefit of the steamship company. It is for the benefit of the shipper, but we will not interfere with the operations of the steamship company by allowing it to remain there.

Q. If you will turn to Condition No. 1, all cargo that is left over or overbooked, that is entirely a matter of the steamship company, is it not, and not the shipper?

A. That's right.

Q. In connection with that Condition No. 1 what does the steamship Company ordinarily do in applying to the Chief Wharfinger for the application of this bulkhead basis?

A. They write a letter.

[fol. 1075] Q. They write a letter?

A. Yes.

Q. And what subsequently happens after that?

A. The Chief Wharfinger then uses his discretion as to whether it shall be allowed or not.

Q. And I assume that it is generally stated by the Steamship company that—

Mr. Kilkenny: May I interrupt you for a moment? I tried my best to get back here, but I could not get back here at the starting time. I want to object, if the Examiner pleases, to any questioning of this witness or of any other witness called from the Harbor Board in regard to any charges or any rates that are fixed for or determined by the State of California or the Board of State Harbor Commissioners in the operation of the San Francisco Harbor or any of the properties or facilities of said State used in connection with the operation of said Harbor to regulate the fixing or collection of any rates or charges in connection with such operation.

I further object upon the ground that the Shipping Act of 1916—

Examiner Basham: Well now, Mr. Kilkenny,—

Mr. Kilkenny: Yes.

Examiner Basham: I think you have already made your objection to any testimony along this line, and it has been [fol. 1076] overruled.

Mr. Kilkenny: Did I make objection to testimony in regard to this same matter?

Examiner Basham: Well, that is all right. But you won't have to argue your objections. You can do that in your brief?

Mr. Kilkenny: I want my objection to cover everything. Mr. Examiner. I want to be certain about that.

Examiner Basham: I thought you had finished your statement. What is it you are objecting to?

Mr. Kilkenny: I want to state the grounds of my objection.

Examiner Basham: I don't want to hear any argument on that objection because it will be overruled, and you can put that in your brief.

Mr. Kilkenny: Still, I want to state the grounds for my objection. I think that is part of my objection.

Examiner Basham: All right, go ahead.

Mr. Kilkenny (Continuing): —on the ground of—I further object to any further questioning along this line and to any questioning in regard to any rules or regulations issued by the Board of State Harbor Commissioners, particularly in regard to the subject of wharf demurrage for storage or dockage or tolls or rents, or craneage.

Mr. Differding: I presume you mean to include free [fol. 1077] time, too?

Mr. Kilkenny: What is that?

Mr. Differding: That is the other subject.

Mr. Kilkenny: And the ground of that is that the shipping Act of 1916 does not apply to any such rates or charges or the collecting of any such rates or charges by the State of California or the Board of State Highway Commissioners. And I want to put it on another and separate ground: That in establishing, instructing, maintaining and operating the harbor at San Francisco, and all the property and facilities used in connection therewith, including the fixing, adoption and collecting of all rates and charges in connection with the operation of said harbor and property and facilities, the State of California and the Board of State Highway Commissioners for the San Fran-

cisco Harbor are acting in a Governmental capacity and performing a governmental function; and that while so acting and while so performing such governmental function, they are not subject to regulation by Congress, and that the United States Maritime Commission has no jurisdiction of any such activities.

Examiner Basham: Your objection will be noted and overruled.

Mr. Kilkenny: May I have an exception noted to that ruling?

Examiner Basham: Yes, sir.

[fol. 1078] The Witness: Mr. Examiner, may I have the privilege of consulting with counsel for a moment?

Examiner Basham: Yes.

Mr. Kilkenny: It is understood that this testimony is given subject to all my objections?

Examiner Basham: Yes, sir.

Mr. Kilkenny: May the objection run to all questioning of this witness?

Examiner Basham: Yes.

Mr. Differding: And among the specific items that you referred to you meant to include, did you not, free time.

Mr. Kilkenny?

Mr. Kilkenny: Yes. I want the matter of free time included.

Mr. Differding: Now, we have covered them all, I think.

Mr. Kilkenny: We object to any questioning along that line on the same grounds that were given to the other objection by Mr. Differding.

Q. Before Mr. Kilkenny stated his objections, I believe I asked you, Mr. Gates, as to whether or not the usual practice of the steamship company is to state in their communication to the Board that there is sufficient space available on their assigned piers and the prompt loading of the vessel and prompt discharging of the vessel will not be [fol. 1079] interfered with; is that correct?

A. I can't give you that detail. I don't know the exact form that those letters state.

Q. May I ask, Is any separate investigation made by the Chief Wharfinger as to that fact or not?

A. I am sure there is, yes.



Q. What is the course of procedure followed when a shipper desires the bulkhead basis? Is that usually directed to the steamship or to the Board?

A. Well, it is my understanding that it is directed to the Chief Wharfinger. It may be directed to the Chief Wharfinger. It may be directed to the steamship company, and then the steamship company may ask for it directly.

Q. Taking the first situation where it is sent directly to the Chief Wharfinger, what does he do, then, upon the receipt of that request?

A. I am afraid I am going to have to ask you to get that information from Mr. Geary—those details.

Q. All right. We will defer those questions until Mr. Geary takes the stand. Turn to page 18 of exhibit 64, Mr. Gates under the heading "Free time for assembling cargo," will you tell me how long the five days free time applicability to the coastwise and inland waterways trade has been in effect at the San Francisco assigned piers?

A. So long as I can remember.

[fol. 1080] Q. And that is prior to 1927?

A. Yes.

Q. The next item, ten days free time applicable to foreign, offshore and intercoastal trade?

A. I believe at one time it was seven days. It was increased to ten.

Q. And approximately when was that?

A. I can't give you that answer.

Q. Was it about five years ago?

A. I can't be sure.

Q. The paragraph lettered "b", where reference is made to wharf demurrage charges on coastwise and inland waterways trade when left on the space longer than the free time period, which is five days, and prescribes a charge of 21 cents per ton per day, weight or measurement, whichever will yield the greater revenue, for the first five days or part thereof, and five cents per day per ton for the next five days or part thereof, and ten cents per ton day for each succeeding day late, one ton minimum, and lumber may be charged per 1000 feet, board measurement; can you tell me how long that item has been in effect?

A. No, I cannot.

Q. Has that been prior to 1927?

A. I think so.

Q. Here, again; do the bases of weight or measurement [fol. 1081] apply in every particular by the Board in assessing the charges?

A. That is the practice, yes.

Q. Similar to that referred to under bulkhead basis. Paragraph (c) refers to foreign, off-shore and intercoastal trade and prescribes the basis of the charges of 2½ cents per ton per day from the first to the third days, inclusive; five cents per ton per day for the fourth to seventh day, inclusive; and ten cents per ton per day for each succeeding day late. Could you tell me how long that basis of charge has been in effect?

A. No, I cannot, Mr. Differding. It has been a long time.

Q. Was it prior to 1927?

A. I believe so.

Q. And the charges that I have just read in connection with paragraphs (b) and (c) of the free time period for assembling cargo which is applicable to all the trades is assessed against the vessel, is that correct?

A. That's right.

Q. What justification can you offer, Mr. Gates, for the difference in the bases of charge applicable to the coastwise and inland waterway trade as compared to the charges applicable to the foreign, offshore and intercoastal trade?

A. I don't think I can answer that question very well.

Q. Very well. Turning over to page 19 under the head [fol. 1082] ing "Free time for removing discharged cargo," which reads as follows:

"Exclusive of Sundays and Legal Holidays, Coastwise and Inland Waterway and Intercoastal cargo remaining when necessary, on space assigned longer than five days, Foreign, Offshore longer than seven days, and in transit cargo longer than ten days, shall thereafter (Sundays and Holidays not excepted) be assessed a wharf demurrage charge of 25 cents per ton, weight or measurement, whichever will yield the greater revenue, for the first five days or part thereof, and fifty cents per ton for each succeeding period of five days or part thereof (one ton minimum)."

Can you tell me how long that particular provision has been in effect?

A. So long as I can remember.

Q. Prior to 1927? Here, again, the use of the words "Weight or measurement," in assessing the charges mean just what they say?

A. That's right.

Q. Here we find the charges on a different basis than that applicable to the free time for assembling cargo. In other words, for assembling it is on a per ton per day basis, and differing as between certain trades as compared with all of the cargo inbound from vessels. What justification [fol. 1083] can you offer at this time for that different basis of charges, Mr. Gates?

A. Well, I would say to the best of my knowledge, that cargo that arrives before the arrival of the vessel, or something of that kind, is not always the fault of the shipper; while, on the other hand, discharged cargo when it is on the pier can be taken off within the free time.

Q. And those charges appearing under the heading "Free Time for removing discharged cargo" on page 19 is what has been commonly termed your "Penalty" basis of wharf demurrage, is it not?

A. That's right.

Q. And you so designate it yourself?

A. Well, there isn't anything in the book which says it is a penalty.

Q. But that is the term that you have commonly used, is it not?

A. Yes.

Q. And what has been the basis of those charges, Mr. Gates, if you know? Were they determined upon cost, or what was thought to be a charge that would actually be a penalty charge to force the cargoes off the piers?

A. I think in this particular case the charge was made a penalty charge higher than would be economical for the shipper to leave the cargo on the piers, in order to force it off. That is the purpose of it: To clear the transit sheds. [fol. 1084] Q. To clear the transit areas on the piers?

A. For other operations.

Q. And this penalty basis, as well as the bulkhead basis, applies to all of your assigned piers?

A. That is right.

Q. They do not apply at any time in connection with these facilities designated as Piers 45 and 56, which are operated by the Golden Gate and State Terminals; is that correct?

A. They do at some time.

Q. What are those "some times"?

A. Where regular in transit operations are carried on at those terminals.

Q. By that you mean, taking State Terminal first, where they are the terminal agent for half a dozen steamship lines regularly serving San Francisco, you would have this basis applying at that facility?

A. Yes, on regular in transit operations.

Q. On in transit operations?

A. Such as would be carried on at other piers.

Q. Do you have that same situation obtaining at the Golden Gate Terminal?

A. That's right.

Q. Are they also regular terminal agents for several lines in the various trades?

A. Well, I don't know that, but certain operations are [fol. 1085] carried on there; regular operations.

Q. Turning over to page 22 of exhibit 64, which sets forth the charges for the Golden Gate and State Terminals, which appears under the heading "Terminal Toll and demurrage rates," it reads as follows:

"Toll and demurrage rates at State Products Terminal (56)"—which is now called the State Terminal,—  
"and Pier 45 Terminal, for terminal operations shall be as follows:

"General Merchandise  
"(Not otherwise specified)

	Per ton
"Toll (10 days free time)	\$0.15
"Demurrage, first 20 days following free time	.15
"Demurrage, next 30 days or fraction thereof	.25
"Demurrage, next 30 days or fraction thereof	.30
"Demurrage rates beyond the above periods shall be 30 cents per ton for each 30 days or fraction thereof."	

First, I will ask you, What is the significance of the words in the heading here in the second sentence of the first paragraph, Mr. Gates, where it states "For Terminal Operations?"

[fol. 1086] A. Well, that's the distinction between the regular operations we have been talking about and operations where the cargo has been placed in the terminal at these rates which you have just quoted.

Q. How does the Board of State Highway Commissioners differentiate as between the so-called penalty and bulkhead basis, on the one hand, and the terminal operation basis, if we may so call it, on the other hand?

A. I don't quite understand your question.

Q. Well, in other words, I understand from your testimony that there are certain instances where the penalty in the bulkhead basis does apply at both the Golden Gate and State Terminals?

A. That's right.

Q. Yet on page 22 these same facilities have a schedule of rates for terminal operations. Now, will you please differentiate between those two schedules and how they would be applied?

A. Terminal operation is an operation dealing with cargo which has been purposely placed in the terminal on these rates. It is so stated by the shipper.

Q. And—

A. (Interrupting:) To remain there for some length of time.

Q. And the shipper makes application to whom?

[fol. 1087] A. He makes application to the Chief Wharfinger.

Q. To the Chief Wharfinger?

A. Yes.

Q. Does it also often happen that he makes application to the State Terminal or the Golden Gate Terminal?

A. That I don't know, but I—that is, I can't be sure of their operations. I know very little about their operations. However, I think that is a fact: That the shipper then makes arrangements with the operators of that terminal to handle the goods, check them, clerk them, and one thing and another.

Q. And in those instances does the State or Golden Gate Terminal, in turn, request of you the application of this basis of charge?

A. Yes. They take that up with the Chief Wharfinger.

Q. When was this basis of charge at the so-called two terminal operations made effective, Mr. Gates?

A. Well, the Pier 56 or the State Products Terminal was made effective before I went to the Harbor. I don't know the exact year.

Q. Prior to 1927?

A. Yes.

Q. The effective date on the Golden Gate Terminal, I believe, was 1934?

A. That is my best recollection.

[fol. 1088] Q. What was the reason in 1927 or prior thereto that the Board of State Harbor Commissioners found it necessary to depart from their long established practice at the other piers in setting up this rate structure at the State Products Terminal?

A. Well, it is my understanding that facilities were provided on the East Bay that provided this service; but the Board of State Harbor Commissioners, desiring at all times to provide all types of service, every service required in a major port, felt that they must do the same thing also to meet the competition from the other side of the bay.

Q. And in 1934 they found it necessary to devote Pier 45 to the same type of competitive service?

A. That's right.

Q. And how did you arrive at the basis of charges which are shown for these two facilities for terminal operations?

A. I can't tell you about the first one, because I wasn't there, but I think the charges were arrived at more or less just from the fact that similar charges were in effect in other places; to make the charges comparable with the charges that were made in other ports and other terminals.

Q. Well, do you mean particularly the East Bay Terminals or at other ports on the Pacific Coast?

A. East Bay Terminals.

Q. And have you found these rates to be competitive with [fol. 1089] your East Bay Competitors with respect to holding traffic at the two facilities?

A. These rates that now apply?

Q. Yes, sir.

A. I don't know that they are. There have been so many changes in the rates at the East Bay Terminals that I haven't had time to keep track of them.

Q. But regardless of all those things, the Board of State Harbor Commissioners since prior to 1927 have made no change in this general merchandise N. O. S. rate structure as outlined here?

A. I think not. I don't remember of any.

Q. The next item in your tariff, to which I call attention, is on pages 22 and 23, which provides a scale of rates on specific commodities under the heading "Fertilizer and Fertilizer Material," in which some twenty odd items are



enumerated. When was that item first published, Mr. Gates?

A. Oh, I can't give you the exact date of that. I imagine maybe a year and a half or two years ago.

Q. A year and a half or two years ago?

A. I am only guessing, but it was about two years, I think.

Q. What was the reason that the State Harbor Board found for the first time it necessary to publish specific rates on named commodities?

A. Well, we found that the rates on those commodities [fol. 1090] had been reduced on the East Bay—I forget the exact amount—but I think it was put on a daily basis, but it was comparable to this rate.

Q. And has the publication of these rates on these specific fertilizer commodities resulted in the Board of State Harbor Commissioners retaining some of the traffic to their facilities?

A. Yes. We would have lost a lot of it that we had and were in the habit of getting, if we had not cut the rates to meet the other side of the Bay.

Q. You will note on page 23 the words "Fertilizer Compounds or mixed fertilizers." Can you tell me whether that includes peatmoss?

A. No, I can't.

Q. If the consignee contended that under that term peatmoss was embraced would you grant the rate shown?

A. I don't know. I would have to find out whether it belonged there or not.

Mr. Graham: Mr. Differding, can't we ask him what the rate on Peatmoss is?

Mr. Differding: That was going to be my next question.

Mr. Graham: I beg your pardon.

By Mr. Differding:

Q. Would you answer that question, Mr. Gates?

[fol. 1091] A. No, I can't. I am not familiar enough with the detail of this to tell you just exactly what belongs under that specific rate. Maybe someone else from the Harbor can. I don't know.

Q. Possibly Mr. Geary?

A. Possibly Mr. Geary.

Q. Now, the rates shown there, as I understand it, were again on a period basis, and designed specifically to meet your East Bay Competition, is that correct?

A. That's right.

Q. Wouldn't it have been a fact that you would have more precisely met that East Bay competition, if you had had your charges on a per ton-per day basis; similar to what you have for the steamship companies for wharf demurrage when they exceed the free time in the assembling of cargo?

A. It might have been, I don't know.

Q. Well, it is true, is it not, Mr. Gates, that if your charge across the bay, which I believe if I am correct, was 11½ cents per day at the time you published this item, if you had published a similar amount you would have met them precisely?

A. Yes, that is right. But it hasn't been the policy of the Board to go to daily rates except where our cargo doesn't remain 30 days. This is a short period of time that has to be covered with a short time rate.

[fol. 1092] Q. Will you please explain why the Board has not seen fit to do so?

A. Well, I think one reason for it is the manner of administration and the expense of keeping books every day. Furthermore, I think that the rate over a period of time will work out just about the same on a monthly basis as it will by a regular shipper—as it will on a daily basis. In other words, it might be that a shipper on a daily basis will pay, say, two cents per ton, would pay 30 cents for a 15-day period, where he would pay us 30 cents. On the other hand, on a 2-cent per day basis for 60 days he would pay—I mean, for 30 days he would pay 60 cents and still he would pay us 30 cents. We believe that those charges are small enough that it isn't necessary to break them up so fine, and I think they would work out just about even anyway.

Q. And it has been the position of the Board of State Harbor Commissioners that with the single exception of outbound cargo which remains on assigned space longer than the free time all other charges for wharf demurrage, whether penalty basis, bulkhead basis or terminal basis, the storage facilities should be on a period basis?

A. Yes, that has been the situation.

Q. They have not seen fit to depart from that even in the face of, may we call it, severe competition from the East side of the Bay?

[fol. 1093] A. That's right.

Q. At the top of page 22, Mr. Gates, is stated the charges applicable to the Islais Creek Grain Terminal and name as the toll and demurrage rates applicable to grant. Can you state the basis of those charges?

A. No, I cannot.

Q. They were in effect long prior to 1927?

A. I think there was some change made in them subsequent to that time; probably eight or nine years ago; slight change.

Q. What was that made in?

A. I think it was made in the rate.

Q. In the rate?

A. In the rate after the first 90 days; yes, after the first 90 days.

Q. But the period basis as there outlined has not been changed, is that correct?

A. No.

Q. Did you hear the testimony of Colonel Allin here yesterday, Mr. Gates?

A. I heard some of it. I didn't hear all of it.

Q. Did you hear his testimony with respect to his understanding that not only the East Bay Terminals but the Board of State Highway Commissioners were in certain instances waiving wharf demurrage charges against vessels when the vessel was delayed in the ordinary course of its business?

[fol. 1094] A. Yes, I heard that statement.

Q. I will ask you, Do you know of any instance since you were first employed by the Board of State Harbor Commissioners where wharf demurrage charges have ever been waived under such condition?

A. No, I do not. The changes of the Board of State Harbor Commissioners, as contained in the tariff are assessed uniformly at all times. I might go farther and say that all of our accounts are audited by the State Department of Finance. All of our charges are audited, and only recently that department has checked up on our tolls. It has checked up on our demurrage charges and has told us that they find that it is a hundred per cent. The wharfingers haven't

missed anything. Every charge that we make is subject to check and is checked and audited by the Department of Finance at Sacramento.

Q. Do you know of any cost studies having ever been undertaken by the Board of State Harbor Commissioners with respect to securing a basis for determining wharf demurrage charges of any character?

A. I do not.

Q. Assuming, Mr. Gates, that this East Bay competition was not present, would the Board of State Harbor Commissioners cancel out their present storage rates applicable at the State and Golden Gate Terminals?

A. I don't know that. I can't answer that question. It is [fol. 1095] something that would have to be determined by the Board of State Harbor Commissioners.

Q. Would it be your recommendation that they do so?

A. I don't know what my recommendation would be without some study of the situation.

Q. Do you believe that the bases of charges for merchandise N. O. S. and fertilizer and fertilizer materials are on a depressed basis?

A. I don't know. I haven't made any study of it.

Q. Well, in any event, you did put them in to meet East Bay Competition regardless of what it was?

A. That's right.

Q. How low that competition happened to be?

A. That's right.

Mr. Differding: I think that is all I have of Mr. Gates.

Examiner Basham: Any questions?

#### Cross-examination.

By Mr. Somers:

Q. Mr. Gates, in connection specifically with the operations of the Islais Creek Grain Terminal, let me ask you this: When does demurrage start?

A. It starts—let's see. I think after 20 days free time.

Q. Do you notify the consignees of grain of the due arrival of their grain at the Islais Terminal?

A. Now, Mr. Somers, the details in connection with that I think I will have to leave with Mr. Geary, who has charge of the wharfingers, and who handles those details out there.

Q. You must be familiar with some of the practices there.

Do you know anything about the issuance of any document that might be used as a warehouse receipt or for collateral purposes being issued?

A. I do not.

Q. Do you know whether the Board issued such documents?

A. The Board does not.

Q. You know, do you not, that the law specifically prohibits the State Board from issuing warehouse receipts?

A. I know that the law prohibits the Board from acting as bailee.

Q. You have not, then, delegated powers to anybody else to issue warehouse receipts on grain arriving at the Islais Terminal?

A. No.

Q. In connection with the free time period now 20 days, is it a case of your being responsible for initiating this extension of time which was once ten days?

A. No, I don't know who to blame for that, Mr. Somers. I don't know who was responsible for the change or when it was made.

[fol. 1097] Q. Are you familiar with the grain tariff that was in existence in 1925?

A. No, I am not.

Q. You must have it of record in your office. You don't recall about a series of charges starting in with ten days free time, 15 cents for the succeeding 20 days, then two periods of 30 days each at 25 cents per ton, then a period of 30 days at 7 cents a ton, and then a period of seven consecutive 30 days at 4 cents per ton?

A. I know that changes have been made, and I know that those were the rates in effect at one time before I went to the Harbor.

Q. Do you recall about an amendment that was made in your rates effective July 1, 1928, when you increased those demurrage rates so that in lieu of the 7 cents per ton per day for one period and four cents per ton—I mean, seven cents per month for one period and four cents per ton for several successive 30-day periods you substituted 10 cents for 30 days?

A. Yes. I know there was a substitution made about that time, yes.

Q. Have you ever stopped to figure, or did you at that time, that during what we call a season, beginning June 1 of one year and ending on May 31 of the succeeding year, that these charges for wharf demurrage could total [fol. 1098] \$1.55 per ton?

A. You mean under the old rate?

Q. Under the old rate.

A. I haven't figured this out, no. But that is possible, yes, of course.

Q. You will recall that in the amendment of July 1, 1928 you provided that the schedule should cease at the end of May 31st following the arrival of the grain?

A. Yes, I do.

Q. And that was in line, was it not, with the practice of seasonal storage on grain in grain warehouses throughout the state?

A. Yes, that's right.

Q. Now, when your tariff was amended as now in effect, you abandoned the idea of May 31st as a seasonal landing, did you not?

A. Apparently so, yes. It covered a year—and, by the way, I don't know—I am not sure that the provision before this present provision was inserted covered any specific time; that is, any particular month. It may have, but I am not sure of it. My best recollection is that it read something like it does here now. In other words, it covered a period of a year, but not commencing at any one time or the other. Now, I may be mistaken, but that is my best recollection.

[fol. 1099] Q. You are referring now to this amendment that I referred to myself, effective July 1, 1928? You do not believe that the time was limited to May 31st next following date of arrival?

A. I say, to the best of my recollection it was very much the same as it is at the present time, but if not, the tariff would be the best evidence.

Q. I should like to show you the booklet which I have in mind and which I secured from your office, effective December 1, 1925, with a page inserted commencing July 1, 1928. I would like to have you read the three lines following the initial schedule there.

A. "Demurrage rates beyond the above period shall be 10 cents per ton for each 30 days or fraction thereof, pro-



vided, however, the maximum time for any shipment should not extend beyond the last day of May next following its arrival.

Q. So, as I stated before,—

A. (Interrupting:) The month is stated.

Q. (Continuing:) —it is a fact that at one time you followed the practice throughout the State in making seasonal storage rates, but now you have abandoned that plan; is that right?

A. Well, I can't say that I am very familiar with the seasonal rate practice of the warehouses. However, I am [fol. 1100] willing to take your word for that, Mr. Somers. These changes were made, yes.

Q. I should like to read for the record, Mr. Gates, a short paragraph, four lines, from a report of the Board of State Harbor Commissioners for the Port of San Francisco for the fiscal year ending June 30, 1930, and ask you if this is not correct:

“The Islais Creek Grain Terminal is 1250 feet long and 220 feet wide with adequate wharf space and is equipped with up to date cleaning and grading machinery. This terminal is given over entirely to the handling of grain for export.”

Is that correct?

A. I think that's the correct statement.

Q. Is it a fact that the terminal is now so used entirely for export movement of grain?

A. Yes, I think that's right; at least that is the intention.

Q. Are you not aware of the fact that grain is arriving there continuously by rail and truck?

Q. And it moves out also by rail and truck?

A. Well, that may be; some of it, I don't know. My understanding was that, of course, grain came in there and it was cleaned and sometimes screenings and that kind of thing was moved out, which could not be shipped, of course; [fol. 1101] could not be exported it was moved out of the terminal by rail or truck.

Q. Are you not aware of the fact that there has been a heavy movement out of this terminal by rail to the Mid-continent area of the United States for growing purposes?

A. No, I am not sure of that, Mr. Somers.

Q. I think you testified last week something about the operations of the Islais Creek Grain Terminal Corpora-

tion and that they rented from the Harbor Board what might be termed an island, in the approximate center of the terminal, some 50 feet square with a tower-like structure which was constructed by the State Board, for which they paid \$250 a month, and in which they conducted cleaning and grading operations. Is that right?

A. Yes. I am not sure of the area, but there is certain space, used for cleaning and grading and for office space, and for which they pay a rental, I believe, of \$250 a month.

Q. Grain is contained in that particular area, and while grain is contained in that particular area is there any wharf demurrage assessed?

A. To my best knowledge and belief, there are tolls and wharf demurrage charges on all of the grain that goes into the terminal, no matter where it is in the terminal.

Q. Within the past few years there have been some more improvements constructed in the terminal mainly for the [fol. 1102] purpose of storing or handling grain in bulk. Are you familiar with that situation?

A. Yes, sir, generally.

Q. Who constructed the bulk bins to the terminal?

Mr. Kilkenny: Now, Mr. Examiner, is that material? I object to that upon the ground it is wholly immaterial.

Mr. Somers: I think I am entitled to know just what the operations are down there.

Examiner Basham: Objection overruled.

By Mr. Somers:

Q. Will you tell us who constructed the bins?

A. Well, I can't tell you precisely what particular part was paid for by the Board of Harbor Commissioners or paid for by the operators; but, generally speaking, the Board of State Harbor Commissioners, have paid for any work that was done on the structure and the operators of the terminal, have paid for all machinery and things of that kind.

Q. The capacity of these bins is something like 2000 tons is it not?

A. I think so, but I couldn't tell you.

Q. Are you of the opinion that grain, while contained in these bins, is subject to your charges of bulkhead demurrage?

A. Yes, I am; or, rather, demurrage; not bulkhead demurrage.

Q. Wharf demurrage. Is there any rental paid the State Board for the use of these bins?

A. For the use of the bins?

[fol. 1103] Q. Yes.

A. No. All the rental we get from them—as I say, I think they are \$250 a month—and it covers the space upon which the machinery—cleaning and grading machinery and the offices are.

Q. Did the State Board expend approximately \$280,000 in the construction of these bins?

A. I couldn't answer that without reference to the records.

Q. Have you any idea as to the approximate amount?

A. No, I don't know that we spent any, Mr. Somers. I would have to refer to the records.

Q. In the receiving of grain at the terminal, who determines what grain shall be received and what grain shall not be received?

A. Well, the Board of State Harbor Commissioners, if any necessity arises, can determine that, and that is that any grain will be received when there is room for it.

Q. Is it not a fact that the Islais Creek Grain Terminal Corporation has exercised the right, or at least has performed the act, of declining to receive grain for certain periods?

A. Have never heard of it.

Q. Do you not know that there has been at times a complete blocking of all space down there because of the large quantity of grain on hand?

[fol. 1104] A. Oh, of course, as I say, they couldn't receive any more grain if the facility was full.

Q. Then any embargo that might be declared down there would be declared by the State Board on the reception of grain?

A. No, not necessarily by the State Board. But it seems to me it wouldn't be necessary to declare an embargo if the facility was full. It would be perfectly obvious you couldn't put any more in.

Q. Has it not been the practice down there at times to declare an embargo on track receipts of grain?

A. Not to my knowledge.

Q. Can you tell me anything about the capacity of the Islais Creek Grain Terminal Corporation's area there?

A. No, I can't. I am not familiar with it.

Q. Is it not a fact, if I may refresh your memory, that there has been at times over 50,000 tons of grain on wharf demurrage there at one time?

A. I couldn't say how much exactly.

Q. Does that sound unreasonable?

A. No.

Q. When it comes to vessels calling at the Islais Creek Terminal for loading this grain that is on wharf demurrage, who decides when and to what extent vessels may call to take such cargo?

A. They have to get an assignment from the Chief Wharfinger.

[fol. 1105] Q. Isn't it, as a matter of fact, the privilege of the Islais Creek Grain Terminal Corporation to decide when there will be vessels come to that dock to receive shipments of grain?

A. No. But if they have shipments of grain to go out, and there is a vessel to take it, we wouldn't interfere with it.

Q. So that if there were two vessels to go out at the same time, who would determine which one of the vessels would receive such cargo?

A. The Chief Wharfinger.

Q. Isn't it a fact that they run that grain terminal to suit themselves and they will decide what grain will be received and what vessels will call and when?

A. No, I would say not.

Q. Isn't that a matter of common knowledge, that the terminal is so operated?

A. No, no, not to my knowledge. The terminal is owned by the Board of State Harbor Commissioners which has complete control of it, and if there are any practices down there that the Board of State Harbor Commissioners do not like they could put a stop to them at any time. No complaints have ever come to my notice of the character that you are mentioning.

Q. Do you like the practice of the Islais Creek Grain Terminal Corporation issuing negotiable instruments for grain that is on wharf demurrage in your property?

[fol. 1106] Mr. Kilkenny: Just a minute, Mr. Examiner. That is assuming something not in evidence. It is not proper cross examination. There is no evidence on that fact at all.

Examiner Basham: I don't think it makes any difference whether he likes it or not. The objection is sustained.

By Mr. Somers:

Q. Then I don't think I get it clear in my own head. Is it known by the State Board that warehouse receipts are issued by anybody for grain resting on Islais Creek Terminal?

A. I have never seen one. I don't know, Mr. Somers. There may be, but I don't know. I have never seen one.

Q. If it should be proved to you that such is the practice would the Board approve of the practice?

A. I don't know that the Board would have anything to do with that. I mean, I don't think it would be a matter that would concern the Board as to what the owners—

Q. (Interrupting:) Would it not be delegating certain powers—

Examiner Basham: Just a minute. What bearing does that have on the issues in this case, Mr. Somers?

Mr. Somers: The bearing is that there is a terminal operating here contrary to law.

Examiner Basham: What law?

Mr. Somers: The Act of 1921.

Examiner Basham: We are talking about the Shipping [fol. 1107] Act of 1916.

Mr. Somers: I know, but contrary to the laws of the State of California.

Examiner Basham: I don't think that is relevant in this proceeding. It probably would be in a State proceeding.

Mr. Somers: I can't argue that point, Mr. Examiner, but I thought that we were here to uncover unfair practices.

Examiner Basham: We are here to determine whether or not these practices violate the Shipping Act of 1916, and not whether they violate any California statutes.

Any further questions?

Mr. Somers: I think that is all.

By Mr. Vaughan:

Q. Mr. Gates, do I understand correctly that the Golden Gate Terminal Company and the State Terminal Company are the only terminals on this side of the Bay that issue warehouse receipts?

A. I don't know that they issue warehouse receipts. I have never seen one of them.

Q. The Board of Harbor Commissioners in connection with any wharf demurrage or bulkhead storage do not issue any kind of receipt that is used as collateral for bank loans, does it?

A. Not that I know of. Well, I will say, "No."

Q. What kind or class of commodities to your knowledge [fol. 1108] are stored at Golden Gate Terminal or the State Terminal Company?

A. Oh, fertilizer and cotton sometimes. I have seen cherries in barrels, canned fruit goods, dried fruits, and things of that kind.

Q. Do either of the terminals actually store general commodities?

A. No, I don't think so. There are others that could answer that question better than I can, but I don't think so. I think it is usually large lots of one particular commodity.

Q. Is there any restriction which the State Board of Harbor Commissioners has imposed in connection with the license to either of these companies that would prohibit them from handling any article of commerce that might move over their terminal properties?

A. I don't know of any restriction that has been exercised so far.

Q. To your knowledge, how long have individual lots of freight remained in storage at those two terminals under wharf demurrage rates?

A. Oh, many months, I guess.

Q. Do you know whether or not Golden Gate Terminal Company performs free handling on goods to or from storage piles?

A. No, I do not.

[fol. 1109] Q. What would your answer be with respect to State Terminal Company?

A. Well, I don't know, but I don't think so. I think they get a charge for every service that they perform.

Q. They get a handling charge?

A. I think so, yes.

Q. No handling charges are assessed on cargo transhipped between ocean carriers, are they?

A. I can't answer that question. The Board of Harbor Commissioners has no handling charges.



Q. The Bulkhead storage rates are lower, are they not, than the rates concurrently charged by public warehousemen in the City and County of San Francisco, Mr. Gates?

A. I am not familiar with the public warehouse charges.

Q. You do not know that?

A. No, I don't know.

Q. Is it not true that the tariffs of the component members of the warehousemen's Association of the Port of San Francisco are mailed to your traffic manager?

A. Probably so.

Q. But you have never seen them?

A. No, I have no knowledge of them.

Q. To your knowledge, has either the State Terminal Company or Golden Gate Terminal Company stored any sugar at their respective terminals on behalf of Spreckels Sugar Company under wharf demurrage rates?

[fol. 1110] A. I think so.

Q. And the wharf demurrage revenue on that sugar has gone to the State Board of Harbor Commissioners, has it?

A. That is right.

Q. And the only revenue that the terminals have received has been their handling charges?

A. That is right.

Q. In connection with that particular sugar, do you know how long any particular lot remained in storage under wharf demurrage rates?

A. No, I can't answer that question without the record.

Q. Do you know whether or not Golden Gate Terminal Company has ever stored any Swedish Newsprint rolls on behalf of the San Francisco Chronicle?

A. I think they have.

Q. Have you any knowledge as to how long those particular lots, or any particular lots of the newsprint rolls have remained in storage?

A. No, not without the records, Mr. Vaughan.

Q. Do you know whether or not odd-lot deliveries are made on that newsprint?

A. I couldn't answer that question.

Mr. Vaughan: You don't know. That is all.

By Mr. Graham:

Q. Mr. Gates, on these demurrage rates, and used in connection with your free time, do you find that

those rates effectually move the cargo off the docks and keep your docks clear?

A. I think so, generally speaking.

Q. In other words, they are high enough for that purpose?

A. I think so.

Q. Do you have any provisions in your tariff at all for so-called extension of free time cases of emergency or delays of the vessel?

A. No. Our free time can be reduced, but not extended.

Q. Am I correct in my understanding that you testified that demurrage had not been waived within your knowledge on these properties where some emergency has existed on occasion?

A. I have no recollection of its ever having been waived.

Q. Well, you would know if it had been waived?

A. I think so.

Q. It would go to you?

A. Yes, it would go to me, but I haven't any recollection of it having been done.

Q. You have had plenty of applications for a waiver?

A. Oh, yes, yes.

Q. In a case of delay of the vessel who pays this demurrage? The vessel or the cargo?

A. The vessel.

Q. In other words, you look to the vessel for demurrage [fol. 1112] in all cases?

A. No, only with outgoing cargo where it is held there because the vessel is late.

Q. Only in that one case?

A. That is the fault of the vessel.

Q. And in all other cases you look to the cargo?

A. Outgoing cargo; that is, I mean discharged cargo being moved off the piers we look to the cargo.

Q. This practice of bulkhead demurrage of yours is really in effect a limited storage, is it not?

A. I will tell you what it is: It is to meet conditions where cargo is on piers where it is to be either shipped out by water or by rail or by truck where the destination is not known at the time or where it is overlooked or something of that kind, and where there is no purpose in moving it and bringing it back to the pier again; only an extra expense. And it isn't the fault of the shipper and he

shouldn't be penalized. We don't consider that he should be penalized for it. Therefore, we ask what we feel is a usual charge for the space during that time.

Q. In other words, can we call it semi-storage, but not real storage?

A. Well, I have tried to explain it the best way I could.

Q. You have had cases where goods were shipped and taken down to one of your docks and, let us say, where the [fol. 1113] Public Health Service or Department of Agriculture refuses to let it be loaded on the ship, and those goods have remained on the dock for subsequent disposition?

A. Oh, yes.

Q. You use bulkhead demurrage charges in those cases?

A. Yes, I think so. I wouldn't be certain of any specific case. It would depend on the circumstances, but that would mean that the cargo could not be removed. It wouldn't be the fault of the shipper that he couldn't take it off.

Q. In any event, it is within the discretion of the Wharfinger as to what rate he shall charge and what will happen to it?

A. No. It has to be pretty much in accordance with this tariff here. He can't extend it.

Q. You do have a good many instances of cargo remaining on the dock which is not specifically covered by this tariff, such as this last one I gave you?

A. Yes; sometimes, yes; occasionally, but very seldom.

Q. In those cases the wharfinger used his discretion as to what is going to happen?

A. Usually the wharfinger takes it up with the Board of Harbor Commissioners in every case of that kind. There are very, very few of them; very few.

Q. And the Board determines the policy?

A. Yes.

Q. Let me ask you whether in placing goods on bulkhead [fol. 1114] demurrage those goods are moved about from place to place or from one place to another place on the dock when they acquire this status?

A. They may be, yes.

Q. Who has the determining voice as to whether the goods are in fact moved? Is that the wharfinger also?

A. Yes, the wharfinger can have them moved.

Q. And the cost of handling in those cases is borne by whom?

A. It is borne by the shipper, I presume.

Q. In every case?

A. It is not by the Board of Harbor Commissioners.

Q. In other words, you don't absorb that at all?

A. No, no, no.

Q. You don't have any labor, in fact, to perform those services; do you?

A. We do not.

Q. If the application is made by the steamship company they are the ones that perform the job, are they?

A. Well, I can't say whether the steamship company or the shipper. That might be an arrangement between the shipper and the steamship company, but I believe the shipper does in all cases.

Q. And you can't tell me who, in fact, bears the cost?

A. I should say the shipper.

Q. But take the case that I cited to you, where goods are [fol. 1115] sent down to the dock for shipment abroad and for reasons beyond the carrier's control they can't be shipped, which is the case of prunes that existed a couple of years ago that were bound for Italy. The carrier's couldn't take those prunes. Would the cost of moving those prunes be on the ship in that case?

A. I would say "No." I would think that they would be on the shipper.

Q. It goes against the cargo, in other words?

A. I think so, yes.

Q. Do you have a system of policing the docks or, let us say, inspecting the docks to determine the length of time the cargo has remained on in each case?

A. Oh, yes.

Q. In other words, that is done through your wharfinger's office?

A. That's right.

Q. And they do that daily?

A. Yes, sir.

Q. You don't file your tariff with any regulatory body at all, do you?

A. We do not.

Q. And it is your contention that you are not subject to the regulation of any regulatory body?

A. That's right.

[fol. 1116] Q. And you can change your tariff at will without notice, can't you?

A. That's right.

Q. And that is done by the action of the Board of Harbor Commissioners?

A. That's right.

Q. They have absolute authority in that respect?

A. Yes, sir.

Q. In connection with these rates on wharf demurrage and bulkhead demurrage—bulkhead storage—has any study been recently made to determine those rates are reasonably compensatory in any case?

A. We have made no such study.

Q. As I understand you, you do not know yourself the basis on which any of these rates which are in your present tariff was established?

A. No, I do not. But when you talk about them being compensatory, all I know is that the Board of State Harbor Commissioners have operated the Port of San Francisco for something like 76 years and they have never had one cent of money from taxes or any other source except their revenue, and they have paid all their expenses and all their bonded indebtedness and sinking fund charges.

Q. But, of course, they don't pay taxes to anybody?

A. No, they don't pay any taxes.

[fol. 1117] Q. Do you consider that the so-called penalty demurrage beyond the free time should or should not be reasonably compensatory; just that charge?

Mr. Kilkenny: Mr. Examiner, I object to that question upon the ground that the powers of the Board of State Harbor Commissioners for the San Francisco Harbor are prescribed by the statutes of the State of California. The statutes of the State provide that the rates that are charged shall be sufficient to raise enough money to pay the expenses of the Board of State Harbor Commissioners, and they are without power to levy any more charges than are sufficient to carry out those purposes.

Examiner Basham: I think that is a point that may well be left for the brief.

Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Graham:

Q. Mr. Gates, in connection with the subject of demurrage, do you consider that the rate established by you is such a rate as without regard to it being reasonably compensatory attaches a penalty for leaving the cargo on the dock?

A. You speak of the 25 cents for five days and 50 cents for the next five days?

Q. Yes.

[fol. 1118] A. Yes. I think the purpose of that rate is to force cargo off the docks.

Q. Without regard to whether you are going to get any income from that source or not?

A. No. Following Mr. Kilkenny's statement, to the effect that the Board of State Harbor Commissioners must raise sufficient money to pay all their expenses and cannot raise any more than that, I think that these general purposes of the Board under those circumstances has been to spread their charges equitably over the front to all users of the port.

Q. To go on to the question of bulkhead demurrage, that rate is established at a figure which, in your opinion, is reasonably compensatory for the service rendered and the space occupied, I assume?

A. I don't know that.

Mr. Graham: You don't know it?

Mr. Kilkenny: I want to object to this line of questioning.

Examiner Basham: You have already objected to all of his testimony.

Mr. Kilkenny: For the reason that the manner of levying those rates and fixing those rates are established by law, and whether or not it compensates the State for the structures that are built down there is wholly immaterial. All that they have to consider and the law compels them to consider is whether they are raising sufficient money to operate the port, and they can't raise any more money than that. It is not based upon competition at all. I object to any further questioning along that line.

By Mr. Graham:

Q. Mr. Gates, in the copy of exhibit 64 which I have it shows what purports to be an increase in the toll rates. When was that put into effect?



A. That went into effect December 1st of last year.

Q. And that change of rate has not been filed with any regulatory body or published at all except in your own schedule here?

A. That's right.

Q. And I presume that the reason for increasing that was to increase your revenues because you found it necessary to do so?

A. That's right.

Q. It is a fact, is it not, that in the years gone by up to the construction of the Bay Bridges that the Board of State Highway Commissioners have enjoyed a very considerable revenue from the operation of the Ferry Building?

A. That's right.

Q. And that since the construction of the bridges, let us say there has been at least a diminution of that revenue?

A. That is right.

[fol. 1120] Q. To what extent we don't know yet?

A. That's right.

Q. And with that diminution of the revenue will you not be faced with a condition where you will have to increase your rates to comply with your legal obligation to affix rates sufficient to satisfy your indebtedness.

Mr. Kilkenny: Now, just a minute. I think that question is a little uncertain as to what rates are spoken of. I might mention, of course, that there are various other income-producing revenues on there besides rates of storage and demurrage.

Mr. Graham: If that is a fact, I think the witness can tell us that thing, Mr. Kilkenny. I just want to know if, as a result of the diminution from the Ferry Building, you are not in an entirely different position than you have found yourselves in in the past.

A. We have found it necessary to increase certain rates.

By Mr. Graham:

Q. And that was tolls in this case?

A. That was tolls, yes.

Q. Have you made a survey of your prospective business to determine whether that toll increase will take care of the loss of revenue that you had from the ferry building?

A. We don't know what our loss is going to be yet. There are certain other changes that may or may not take place, [fol. 1121] and the Board has plans to build up that revenue to make use of the ferry building,—to make it produce.

Q. These tariffs that are filed by the two terminals, the State Terminal and Golden Gate Terminal, are they approved by the Board of State Harbor Commissioners before they are filed?

A. No.

Q. In other words, they are their own private corporate tariffs?

A. Yes. They submit those tariffs to the Railroad Commission, I believe.

Q. That is right. And so far as the Harbor Board is concerned, they have nothing to do with it?

A. We haven't taken any part in it. We could have something to do with it, I believe, but there is no necessity inasmuch as they have been regulated by the Railroad Commission.

Mr. Graham: I think that is all.

Mr. Townsend: I have some questions.

By Mr. Townsend:

Q. Mr. Gates, the Port of San Francisco consists of a series of finger type piers or docks spread over a considerable area of the water front, does it not?

A. Yes.

Q. How many of those piers are there?

A. Oh, there are about 43, I think, of those finger piers; 42 or 43.

[fol. 1122] Q. About 43. And over how long an area along the water front are they spread, approximately?

A. I would say about five miles, approximately.

Q. About five miles?

A. Approximately; perhaps a little less. I am only guessing.

Q. How many employees approximately does the State Board have to determine the amount of cargo that is on all of those docks?

A. Twenty-two or three.

Q. Twenty-two or twenty-three employees?

A. Wharfingers.

Q. What did you say?

A. Wharfingers.

Q. Wharfingers. And that would mean approximately one wharfinger for every two docks or so?

A. Some of them, depending upon the activity at the docks,—some of them might have one and another one might need two or three.

Q. What handling operations, if any, are performed by the employees of the State Board with respect to this cargo?

A. On the regular piers, you mean?

Q. Yes.

A. None.

Q. Then I would understand that the State Board does not check the cargo either in or out of the regular piers? [fol. 1123] By "Regular piers" I mean excluding the State Terminal and Golden Gate Terminal Docks?

A. I don't quite understand your question, Mr. Townsend.

Q. Let us consider now until I state to the contrary that we are just discussing these so-called assigned piers.

A. Yes.

Q. And that would exclude the State Terminal and Golden Gate Terminal Piers?

A. Yes.

Q. And the Islais Creek Grain Terminal?

A. Yes.

Q. With respect to those assigned piers, then is it correct that the Employees of the State Board do not do any checking of cargo on or off?

A. Oh, the wharfinger takes care of that. The wharfinger knows what the cargo is on the piers.

Q. One wharfinger, then, may handle two or three docks: runs around and checks all of the cargo?

A. Oh, no. He has plenty of records to go through. The steamship manifest he has, and then he checks the cargo that is on the piers that goes over the free time.

Q. Do you know how many employees are required by the East Bay terminals for checking cargo on and off their docks?

A. I do not.

Mr. Kilkenny: I submit that it is wholly immaterial.

[fol. 1124] Examiner Bashani: He said he didn't know anyway.

By Mr. Townsend:

Q. You say that the wharfingers go to the steamship companies for their records of what cargo is on the dock, is that correct?

A. I didn't say that. I said they had access to the records.

Q. How does the State Board determine how much cargo is on the docks for the purpose of assessing wharf demurrage?

A. The wharfinger determines that.

Q. How does the wharfinger determine that?

A. I will have to refer you to Mr. Geary for that. I can't give you the details.

Q. All right.

A. However, I will say that it isn't a large item at all. It doesn't amount to a great deal. There isn't a great deal of it.

Q. Wharf demurrage?

A. Wharf demurrage on the piers; not very much.

Q. Now, then, the operations of the actual handling of the cargo on these assigned docks are performed by the Stevedores or car loaders or unloaders, are they, primarily?

A. They are. The Board of State Harbor Commissioners performs no handling on the docks.

Q. Who performs the car loading and unloading on these docks?

[fol. 1125] A. Oh, various parties, I think.

Q. What types of parties?

A. Car loading companies, private companies, companies of private parties, probably.

Q. Does the State Board of Harbor Commissioners make any charge for the use of its docks by those car loading and unloading companies?

A. It does not.

Q. Who performs the stapling and stenciling and weighing operations on these docks?

A. Various private parties or companies.

Q. Does the State Board make any charge to those parties for the use of those facilities?

A. They do for weighing. There is a small charge for the privilege of weighing, and an office goes along with it.

Q. But not for the other services?

A. No, except they use space for equipment for doing their work, or something of that kind. We rent a little space to them.

Q. In other words, you charge them, if they occupy office or storage space on the dock, and that is all.

A. Yes, or a space to work in.

Q. If they go out on the floor of the dock and do some stenciling you don't charge for them?

A. No.

[fol. 1126] Q. You simply mean that if they have some space reserved exclusively for themselves you charge them?

A. That's right.

Q. When does the free time period commence in the case of outbound cargo?

A. Let's see! That commences when the first cargo is deposited on the pier.

Q. Is it that day when it is deposited, or 12:00, 1:00 A. M. of the next day?

A. No, it is the particular hour that it is deposited, I believe.

Q. You start computing from the hour when it is deposited on the dock?

A. I think that's right.

Q. Then the free time period continues as specified in your tariff, does it not?

A. Yes.

Q. And your demurrage charges commence after the expiration of the free time period?

A. That's right.

Q. On outbound cargo when does the demurrage or storage charge cease?

A. I don't quite understand your question. You haven't got to any demurrage charges yet in your questioning, have you?

[fol. 1127] Q. I said after the free time you charge demurrage charges, do you not?

A. That is right.

Q. How long do those demurrage charges continue? Is it until the time the cargo is actually placed aboard the

vessel, when the vessel starts loading or is it some scheduled sailing date?

A. No. I think it works this way: That the cargo after all is entitled the same as any other cargo to ten days free time, and that it is charged for the time it is there prior to the commencement of the free time, and that the free time ends when the vessel has finished loading.

Q. Well, I am not with you there. You say that the cargo is charged for time prior to the free time?

A. Maybe I had better let Mr. Geary explain that to you later on.

Q. All right.

A. I think that's right, but maybe he can explain it to you more clearly.

Q. Does the Port of San Francisco publish a sailing schedule?

A. We do not.

Q. Now, then, it is not clear to me how you determine when your wharf demurrage charges will be billed against the steamship company, because you said that the charge, as I understand it, was billed against the Steamship company for the time when the vessel was late after the scheduled sailing date?

A. Yes, that is right.

Q. Will you please explain that a little more fully?

A. Against the steamship company.

Q. How do you determine the scheduled sailing date?

A. That depends entirely on when the steamer sails or when she arrives. We don't pay any attention to schedule. We pay attention to the actual hour that the steamer arrives at the pier, or leaves it.

Q. How do you determine, then, when to assess your demurrage against the shipper or the vessel?

A. You mean on outgoing cargo?

Q. Still outgoing.

A. I think I will let Mr. Geary give you the procedure on that. He knows more about that than I do.

Q. What absorptions does the Board of State Highway Commissioners make?

A. They make an absorption on a subsequent switch on the Belt Railroad in case the car is loaded for one or more piers. They also make an absorption on split cars from the State Products Terminal where cargo comes in on a truck,



for instance, and a truck load comes in and part of it is destined to one pier and part to another. However, there is very little of that.

[fol. 1129] Q. What is the amount of that switching charge from one dock to another?

A. Well, our rate is \$4.00 for a loaded car.

Q. And how many switches may one car have that will be absorbed by the State Board?

A. Two. After paying the one switch, it provides for two subsequent switches, if necessary.

Q. Which are absorbed by the State Board?

A. Yes.

Q. Is there a maximum of two additional piers in connection with the truck movement that will be absorbed by the State Board?

A. I don't know. There has been so little of that. I think the cargo is separated at the State Products Terminal, so that it is one movement from there to a pier. There has been so little of it. I don't think it amounts to two or three dollars a month.

Q. Are there any other absorptions by the State Board?

A. The only other absorptions is on fresh fruit from the refrigeration terminal where the amount to be shipped is insufficient for a vessel to call.

Mr. Townsend: That is all, thank you.

#### Redirect examination.

By Mr. Scoll:

Q. Where would that shipment from the Refrigeration [fol. 1130] terminal move to?

A: It would move to another pier on the water front.

Q. How would it move? By truck? By car?

A. Sometimes by truck and sometimes it is loaded into a refrigerator car.

Q. And the absorption you referred to is the charge for the movement by truck or car?

A. Yes.

Q. I would like to ask you one or two more questions. You may have covered these before I got here, but they are only two or three. They were introduced as exhibits 3 and 4, forms of receipt which are issued by the Golden

Gate and the State Terminals. Do you know whether a similar form of receipt is issued by the Islais Creek Terminal?

A. No. I am not familiar with their procedure in regard to receipts; either of the terminals.

Q. Mr. Vaughan questioned you about sugar stored for the Spreckels Company. Where was that sugar stored?

A. There was some of it stored at Pier 45. I am not sure. There may be some at Pier 56. I haven't seen it myself.

Q. That would be either—

A. Either one of the terminals.

Q. Either Golden Gate or State?

A. Yes.

Q. And, similarly, for the newsprint held for the Chronicle [fol. 1131] held at either of those two places, Golden Gate or State?

A. Yes.

Q. With respect to the notice which you give on tariff changes, the tariffs and charges that are published in your tariff, which is introduced as exhibit 54, may be changed by the Board without further notice?

A. It may, yes.

Q. Is that customarily done?

A. No. Any change of any importance is usually made in advance. The last changes, for instance, where the tolls were raised, I think that change was made more than 30 days before the effective date and the notices were sent out to everybody we knew.

Q. Therefore, notwithstanding the fact that you reserve the right to change the tariffs without notice, it is the policy of the Board to give a reasonable notice?

A. Yes, that's right, if it is going to affect anybody to any extent. For instance, a change may be made, or something new may be put in the tariff to cover a situation that has not been met before—one single change of verbiage or something of that kind—it wouldn't. But usually the Board gives sufficient notice to everybody.

Q. And that is the policy of the Board?

A. That is the policy of the Board, yes.

Q. Mr. Townsend asked you about space used by persons [fol. 1132] who perform certain services and what charges are made against those persons. He mentioned stapling.

Where would such stapling take place normally? On one of your terminals?

A. I imagine it may take place on one of the terminals or possibly on one of the piers. I don't know.

Q. It would be on one of the transit sheds?

A. It might be. If some cargo needed stapling it might be done there.

Q. Would that be on space that was assigned to one of the steamship lines?

A. Yes.

Q. If that work takes place on space that is assigned to a steamship line is there any charge for that by the Board of Harbor Commissioners?

A. No. The only charge that we would make would be if the party doing the work rented space for himself to have the headquarters or some place for his gear or his equipment, or an office or something of that kind, then we would charge him the rent. But simply to go on the pier to perform a service to the shipper, we don't make any charge for it.

Q. So the only charge which you would make would be a rental charge for additional space which would be required by a person rendering that service?

A. Yes.

[fol. 1133] Q. And that would apply to such service as we have mentioned, and, in addition, weighing?

A. We do make a nominal charge of \$10 a month for weighing, which allows the weigher to have an office and gives him the right to perform that service on the front.

Q. Do you give him any equipment to do that weighing?

A. No. He furnishes his own equipment.

Q. But you furnish him office space?

A. We furnish him office space.

Q. And that office space would be additional office space which was not already assigned to him by the steamship company?

A. That's right.

Q. With respect to car loading and car unloading, that is also performed, of course, on the terminal floor of the transit sheds?

A. That's right.

Q. And do you make any charge in connection with that?

A. We do not.

Mr. Scoll: That is all, thank you.

## Recross-examination.

By Mr. Rohde:

Q. Mr. Gates, I believe you stated that demurrage charges were never waived in emergencies.

A. I meant by that that all demurrage charges were not waived. There are some demurrage charges made under [fol. 1134] any conditions, as you well know, Mr. Rohde.

Q. During the recent checkers' strike what rate of demurrage was assessed on cargo that was strike-bound.

A. So-called bulkhead storage; 12-1/2 cents a week.

Q. And what was the duration of that strike?

A. Oh, I think approximately two months. I am not sure of the exact number of days.

Q. Will you accept my statement that it was 53 days?

A. Yes, I would.

Q. And that charge was assessed against the shippers, was it?

A. Oh, yes.

Q. Do you know if any corresponding charge was assessed on the other side of the Bay?

A. I do—

Mr. Kilkenny: Now, Mr. Examiner, I object to that question upon the ground that the Board of State Harbor Commissioners are limited in the matter of waiving charges entirely. It can't be done on account of the prohibition of our State Constitution which forbids the legislature to make a gift of public moneys or to authorize any—

Examiner Basham (Interrupting): You mean the law provides?

Mr. Kilkenny: The law provides.

Examiner Basham: But that does not mean that it is not done, does it?

[fol. 1135] Mr. Kilkenny (Continuing): —that the Board is without power to waive charges. He is examining the witness on a question of law.

Examiner Basham: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. No, I can't prove that it was or was not. I don't know of my own personal knowledge.

By Mr. Rohde:

Q. Do you know if there was any discussion with the terminal operators in the East Bay or with the Port of Oakland relative to waiving any demurrage charges or collecting them?

Mr. Graham: I will object to the question.

Examiner Basham: Objection sustained.

Mr. Rohde: That is all.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

The Witness: I made the statement that the records of the Board of State Harbor Commissioners were subject to audit and are audited regularly by the State Department of Finance. Every charge that is made by the Board is audited to see whether it is in accordance with our tariff. Just recently the Auditor made a check of the demurrage situation on the piers—

[fol. 1136] Mr. Kilkenny: Just a minute! A check of what?

The Witness: Of the demurrage situation on the piers as to where the charges were being made correctly and fully, and advised us that they found that they were being made 100 per cent.

Examiner Basham: Didn't you state that before?

The Witness: I say, I just wanted to refer back to that record.

Examiner Basham: I thought you wanted to correct a statement that you made.

The Witness: No. I wanted to be sure to get something in there in regard to your statement.

By Mr. Rohde:

Q. Mr. Gates, is the Board of State Harbor Commissioners answerable to any other State Department or State Official for the proper observance of its tariff?

A. Our accounting is subject to the control of the Department of Finance—the State Department of Finance.

Q. Well, do you ever refer matters of interpretation to the Attorney General?

A. Oh, yes. The Attorney General is our legal advisor.

Q. Then would you say that so far as you are concerned

your tariff has the force of law the same as any tariff filed by any private operator filed with the California Railroad Commission?

[fol. 1137] A. I would. However, I am not a lawyer, Mr. Rohde.

Redirect examination.

By Mr. Differding:

Q. You applied this charge on the strikebound cargo uniformly on all the piers during the strike at that time?

A. Absolutely.

Q. I would like to call your attention to page 18 of Exhibit 64 under the heading "Free time for assembling cargo," paragraph (c), where the words "Weight or measurement, whichever will yield the greater revenue," do not appear. Am I correct that while the words do not appear the Board, as it does in the other provisions of the wharf demurrage section of Exhibit 64, the charges are applied on a weight or measurement basis.

A. Yes. I would say it applies just the same there by weight or measurement, whichever will yield the greater revenue, the same as in the other cases.

Q. Does the same answer apply over on page 20 under Condition No. 1, where again the words "Weight or measurement" are absent?

A. Oh, yes, I think so.

Q. There seems to be a little confusion in my mind, Mr. Gates as to the rates and periods of time which appear in Condition No. 1 on page 20, and the rates and periods which appear on page 18 in paragraphs B and C. You will note on page 20 the rates and periods are exactly the [fol. 1138] same as paragraph (b), which is limited to two trades, but different from paragraph (c) which is limited to three trades. Yet Condition No. 1 applies to all trades. What is your understanding of the application of the rates and periods indicated in Condition No. 1?

A. I think I will have to let Mr. Geary answer that question, Mr. Differding. I am not familiar enough with it.

Q. All right, thank you. Mr. Gates, is it not true that there has been some increase in your costs that may be charged providing a wharf demurrage service on your assigned piers, such as the increased cost of employing clerks in your administrative general offices, since 1935?



A. Oh, I think there have been some increases in the salaries paid employees, yes.

Q. Is it also true of the materials and office supplies required?

A. Well, I don't know that I can say that. I am not familiar with it.

Q. Who provides the cleaning of the docks where wharf demurrage or storage cargoes have been placed for a period of time, and the debris that remains after removal is on hand? Who does the cleaning?

A. You mean on the assigned docks, piers?

Q. Yes, first.

A. It is done by the steamship company.

Q. The steamship company performs the cleaning at their expense?

[fol. 1139] A. Yes.

Q. What is the situation at the two terminals?

A. The terminal operators do that.

Q. They do that?

A. Yes.

Q. I believe you previously stated that you perform no checking of the cargo in or out?

A. No, that's right.

Q. And the determination of the charges, whether or not on a weight or measurement basis, is done by the assistants to the Chief Wharfinger by actually checking the cargo or reviewing ships' manifests or both?

A. Yes, that's right.

Q. How about the furnishing of lighting facilities on these piers where wharf demurrage cargo is stored? Is the cost thereof borne by the assignee, the Steamship Company?

A. The Harbor Board itself provides a certain amount of lighting on the piers.

Q. Is it split, then, between the Harbor Board and the Steamship Company?

A. And any additional lighting or extra lighting is paid for by the steamship company.

Q. Has there also been some increase in your costs of operation by payroll taxes on your employees?

[fol. 1140] A. No. We have no payroll taxes.

Q. You have no payroll taxes. In addition to these assistants to the Chief Wharfinger do you also provide watchmen in all these piers who are there for fire protec-

tion purposes and prevention of theft of cargoes on wharf demurrage as well as in transit?

A. No. We are not responsible for the cargo and the steamship companies provide their own watchmen.

Q. They provide their own watchmen. Turn to this matter of leases, Mr. Gates, does the Board of State Harbor Commissioners have any industrial leases with lessees of properties under the jurisdiction of the Board?

A. We have a few leases, yes.

Q. Are any of those leases covering areas on the finger piers or the two terminals?

A. No, they are not.

Q. They are all in the rear of the piers or wharves?

A. Of the waterfront property, yes.

Q. Do you have any basis of charges on a square foot per month or other period of time to apply in connection with your finger piers or terminals other than that named in Exhibit 64?

A. Except for—I don't think the charge for office space is named in the tariff. That is an additional charge over and above the charge named in the tariff for space for cargo.

[fol. 1141] Q. Would you mind stating that charge? Is it on a square foot basis?

A. Yes; three cents per square foot per month.

Mr. Differding: That is all I have of Mr. Gates. I have some others of Mr. Geary.

Recross-examination.

By Mr. Graham:

Q. Just one question, if I may. Mr. Gates, these absorptions to which you referred in Mr. Townsend's questions, those are not filed nor are they contained in your tariff?

A. No, they are not in the tariff.

Q. What have you? Just a memorandum in your office?

A. No. They are done by resolution of the Board.

Mr. Graham: I see.

By Mr. Somers:

Q. Very briefly, Mr. Gates, the concession for performing services of unloading cars at the Grain Terminal, weighing,

piling, delivering, and so forth, is owned by the Islais Creek Grain Terminal Corporation, is it not? The concession has been granted that corporation has it not?

A. Yes, a concession has been granted that corporation.

Q. That corporation consists of three exporters of grain, does it not?

A. I can't answer that.

Q. You know something about the personnel of the corporation, do you not?

A. Very little.

Q. Are you quite familiar with the fact that three important exporters secured this concession from the Board of State Harbor Commissioners?

A. No, I don't know that.

Q. Do you know that other exporters do not have the privilege of going on the dock and performing any services?

A. Oh, that is another matter.

Q. Well isn't it a fact?

A. Yes. I can explain that, I think. It is the same situation as it is with our other terminal. Somebody has to be responsible for the merchandise and the services. You can't let everybody go in there. You have to put somebody in charge of a terminal and hold them responsible for it, and that is the only way a terminal of that kind can be managed properly.

Q. Would it be possible for any other exporters to receive this concession in turn we will say, from the Board, or have the concession for a part of the term?

A. I don't know about that. That would be a matter for the Board to decide.

Q. Isn't it pretty much of a monopolistic situation so far as the present stockholders of the Islais Creek Grain Terminal Corporation are concerned?

[fol. 1143] A. I know nothing about the stockholders of the Islais Creek Grain Terminal Corporation. But I do know that the operations of that terminal are on the same basis as all the other terminals, and there have been changes from time to time in the other terminals. Somebody else operated them for a while, but it is necessary that some one person or some one organization have the control and the responsibility for operating a terminal. You can't open it up to everybody.

Q. You say it is just the same at the State Terminal and at the Golden Gate Terminal. The operators there are

warehousemen, are they not? They are not dealers in commodities?

A. I don't know that. They might be for all I know.

Q. Well, isn't it a well known fact that the operators there are public warehousemen and so scheduled and so listed in your office?

A. Yes. But that doesn't mean to me that they might want the owners of merchandise or something of that kind. That could happen.

Q. Well, isn't it a fact, to your knowledge, that the stockholders of the Islais Creek Grain Terminal Corporation are dealers in grain, exporters?

A. No, I don't know who they are. They may be, but I don't know who they are.

Q. Don't you know who the President is?

[fol. 1144] A. No, I do not, unless it is Mr. Bell. It may be Mr. Bell. I don't know. I usually talk with him about anything concerning the terminal.

Q. Is he not in the grain business?

A. I don't know that.

Q. Well, if you don't know, you don't know.

A. No, I don't. I don't know anything about the personal affairs of our tenant.

Q. Will you take my word for it?

Mr. Kilkenny: Mr. Examiner, I submit that the gentleman is not testifying.

Examiner Basham: I think you have exhausted his knowledge on that subject.

By Mr. Kilkenny:

Q. Mr. Gates, in fixing and regulating rates, dockage, wharfage, tolls, rents and other charges, the Board is regulated in its action by the terms of Section 3080 of the Harbor and Navigation Code, is it not, to the effect that it may collect an amount of revenue therefrom that it will enable it to perform the duties required by that part of the Code?

A. That is correct.

Q. And they are also limited by the provisions of Section 3084 of the Harbor & Navigation Code of the State of California which provides that a greater amount of money shall [fol. 1145] not in the main be collected pursuant to this part of the Code than it is necessary to enable the Board to perform the duties—

Examiner Basham (Interrupting): Mr. Kilkenny, can you not refer to that in brief? That is not a matter that has to be proven on this record.

Mr. Kilkenny: That may be true, but the question has arisen here.

Examiner Basham: You have stated it two or three times.

Mr. Kilkenny: I am asking him about specific provisions of law.

Examiner Basham: It does not have to be proven on this record.

Mr. Kilkenny: I have already asked the question.

A. Yes, that is right.

By Mr. Kilkenny:

Q. And now about that matter of waiver of wharf demurrage, I did not hear you well on that. You testified that no charges for wharfage or wharf demurrage were ever waived, is that correct?

A. To my knowledge.

Q. That is a matter regulated by law?

A. Yes.

Q. The Constitution of the State forbids it?

A. Yes.

Q. The Board has no power to do it?

[fol. 1146] A. That's right.

Redirect examination.

By Mr. Scoll:

Q. Mr. Gates, I want to ask you another question or two concerning this performance of services on the assigned piers and the renting of space. I am not entirely clear on that.

Examiner Basham: Go on and ask the question.

Mr. Scoll: Just a minute, please.

By Mr. Scoll:

Q. What space is rented to such people who might perform the services of stenciling, weighing and so forth? Is it just office space?

A. Oh, it might not be called "Office space;" little corral equipment.

Q. And any of that space would be rented at the rate of 3 cents per square foot?

A. No. It would be at least 4.2—it might possibly be an arbitrary rental with a minimum.

Q. A minimum of what?

A. A very small space.

Q. It would be on a square foot basis with a minimum of \$10.00?

A. Yes.

[fol. 1147] Q. How do the rents range or run per square foot? What is the range?

A. 4.2 cents.

Q. Up to what?

A. That is the top, except there is a minimum for a small space.

Q. Do you have any rule or regulation concerning what services you will permit to be performed on the assigned spaces and what services you will not permit to be performed?

A. I don't think that question has ever come up. I imagine that all the services that are performed there are necessary to be performed there. In other words, I will put it this way: Any necessary services—any services necessary to be performed on the pier.

Q. Would that permit the packing or re-packing of cargo?

A. For damaged cargo?

Q. For other than damaged cargo?

A. Well, I don't think there is any of it being done on the water front except for damaged cargo.

Q. Do you supervise the performing of such services?

A. Oh, no, no.

Q. So that, so far as you know, the various assignees might do canning operations on those?

A. Oh, we would know about that.

Q. Would you permit it?

[fol. 1148] A. No, no; we would not.

Q. Where would you draw the line?

A. We would draw the line, I think, as between cargo—damaged cargo that might be necessary to repair before it could be shipped or taken away from the pier. We wouldn't allow canning operations, or operations of that kind on the pier.



Mr. Scoll: That is all, thank you.

Mr. Differding: I suggest a five-minute recess, Mr. Examiner.

Examiner Basham: Did you have any further questions of this witness?

Mr. Scoll: No.

Examiner Basham: You are excused, Mr. Gates.

(Witness excused.)

Examiner Basham: A five-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:

Mr. Differding: Mr. Geary, please.

WILLIAM A. GEARY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

#### Direct examination.

By Mr. Differding:

Q. Will you please give the reporter your full name and [fol. 1149] business address?

A. William A. Geary, Chief Wharfinger, Board of State Harbor Commissioners, 1730 Cornell Drive, Alameda.

Q. Mr. Geary, you are Chief Wharfinger for the Board of State Harbor Commissioners of San Francisco?

A. Yes, sir.

Q. And how long have you held that position?

A. About two and a half years, sir.

Q. Prior to that time what were your duties with the Board of State Harbor Commissioners?

A. I was Wharfinger and Revenue Auditor.

Q. And would you briefly describe the duties of the Chief Wharfinger particularly as they relate to wharf demurrage and free time.

A. Well, my department has charge of all the wharf demurrage and also all of the free time. In other words, I have 21 wharfingers under my jurisdiction, and as soon as the cargo is planted on the dock they report at my office.

Q. Do you have a copy of exhibit 64 in front of you?

A. Yes, sir.

Q. Do you mind turning to page 18?

A. Yes, sir.

Q. Paragraph (b) where appear the words in parenthesis "Five days after assignment of space," what does that mean, Mr. Geary?

[fol. 1150] A. Well, Coastwise and inland waterways cargo is entitled to five days free time. That starts at the time the first cargo arrives at the dock until five days thereafter.

Q. By that do you mean, for example, if the first carload of freight for the particular ship for which the space has been assigned arrives at one o'clock in the afternoon, five days later at one o'clock in the p. m. the free time is up?

A. Yes, and the ship must be moving by that time. Otherwise, it has exceeded the free time.

Q. That is my next point. Must the ship start to load the initial tons or must it have completed loading the fifth day at one P. M.?

A. No, it must have started to load.

Q. And if the amount of cargo is such or the operating conditions are such that it takes that vessel five more days to finally complete its loading, the free time would, in effect, be extended the additional five days; is that correct?

A. Well, I don't quite understand the question.

Q. I am trying to find out,—well, I will state it in a little clearer manner. Assume that the first carload of freight arrived on the dock on February 10th and the vessel first starts to load on February 15th and finally completes loading on February 20th. What charges, if any, would be assessed by reason of the fact that there was a spread of ten days between the receipt of the first cargo for that vessel [fol. 1151] and the final completion of the loading of the vessel?

A. There would be no charge. We accept that as being loaded within the free time.

Q. And that would be true if the vessel was loading only one day more than the five-day period or five or six days?

A. That is correct.

Q. And that same condition would obtain in the other trades shown and indicated in paragraph (c) on page 18, is that correct?

A. Yes, sir; that is correct.

Q. And is your understanding the same as that stated by Mr. Gates that the charges shown in paragraph (c) are also on a weight or measurement basis?

A. Yes, that is the regular practice.

Q. And does that likewise hold true on the charges indicated in Condition No. 1 on page 20 applicable to the bulkhead storage?

A. Yes, sir.

Q. In exercising your discretion as chief wharfinger in granting bulkhead storage, what is the usual procedure that you follow in granting that bulkhead storage basis of charge, Mr. Geary?

A. Well, the procedure is for the steamship company to write in requesting the bulkhead storage. We check into it and see if it is in accordance with our rules and regulations [fol. 1152] The wharfinger does that for me. And, if so, he reports back to me and I issue a letter of bulkhead storage, and when the wharfinger receives that letter, then he is authorized to make the bulkhead storage charges.

Q. You refer to rules and regulations. Are there any rules and regulations respecting the application of bulkhead storage rates not set forth in exhibit 64?

A. Yes. There is one.

Q. Would you mind stating its purport as clearly as you can?

A. This was adopted on the 25th of August, 1938 on motion of Commissioner Moore, seconded by Commissioner Sullivan. The following resolution was adopted by unanimous vote:

"Resolved that the tariff charges of the Board of State Highway Commissioners for San Francisco, Harbor No. 2, effective December 1, 1925, amended to February 1, 1938, be and hereby is amended at page 20 after paragraph 3, by adding hereto:

"4. Cargo which cannot be removed due to circumstances over which the shipper has no control."

I might add that that was put in by the Board to take care of situations where there was a tie-up of cargo. As you well know, we have had a good many tie-ups, and under those circumstances we grant them bulkhead storage on the cargoes.

Q. And that is specifically for the purpose of granting [fol. 1153] bulkhead storage rates on strikebound cargo, either by the stevedores on the dock or by the personnel of the vessel; is that correct?

A. That is correct.

Q. Now, do you make the same investigation as to exercising your discretion when a request is received direct from a shipper as you do with a request from a steamship company?

A. I won't recognize a request from a shipper. I always refer to the steamship company.

Q. What happens if the steamship company says "Nothing doing! We don't want that basis granted," and the shipper puts up a very urgent plea that it should be granted?

A. Well, we investigate it. Sometimes the dock is so congested that it is impossible to leave that cargo on the dock without interfering with the operations. In that case the steamship company says they can't operate. They have this cargo on the dock and we just cannot grant a bulkhead storage.

Q. Have you ever overrode the objection of a steamship company to the granting of bulkhead storage rates at the request of a shipper?

A. No. The shipper usually requests it with the permission of the steamship company. I refer it to the steamship company, and then they write a letter requesting the bulkhead storage, and they write a letter forwarding the request [fol. 1154] of the shipper.

Q. Referring to the matter of the free time for removing discharged cargo which is set forth at page 19 of Exhibit 64, with five days allowed for coastwise, inland and inter-coastal, foreign and offshore seven days, and in transit ten days, in cases where it takes the vessel five days to discharge its cargo completely does the free time run from the discharge of the final ton from the vessel or from the time that the vessel starts to unload the initial ton?

A. No, from the time the last slingload arrives on the dock.

Q. Does that apply from the hour that that last slingload is placed on the dock or at the following 12:00 midnight or 7:00 a. m. in the morning, or do you have any set hour from which those charges would henceforth apply?

A. No. The hour the last slingload was discharged on the dock.

Q. Now, I asked Mr. Gates a question which was confusing to me with respect to the two bases of charges indicated in paragraphs (B) and (C) on page 18, and the single basis indicated under Condition No. 1, page 20. How do you

apply the charges indicated in Condition No. 1 on page 20?

A. Well, as you note, this cargo is either rejected or left over or overlooked, and usually if it is on the dock for two or three days, the shipper will take advantage and pay 2½ cents a ton. But sometimes it is on the dock longer [fol. 1155] than that, and he will make application for bulkhead storage, so these rates will apply until the bulkhead storage rates are affected and applied.

Q. Do I understand correctly, when cargo is not removed from the vessel for which it is assembled and limited to rejected, left-over or over-booked cargo remaining, then the basis indicated under Condition No. 1 applies regardless of trade, is that correct?

A. That is correct.

Q. But when it is not rejected, left over or over-booked for the vessel for which it was assembled, the two bases of charges, dependent upon the trade, are applied as indicated in paragraphs (b) and (c) on page 18. Is that correct?

A. Yes, sir.

Q. Now, in exercising your discretion in the granting of bulkhead storage rates, Mr. Geary, have you ever required as a condition thereto, that the steamship company or the shipper or consignee must bear the expense of transferring cargo from one point on the dock to another or high-piling the cargo in order to conserve space and restricting your answer for the moment to the assigned piers?

A. Yes.

Q. That service, however, is never performed? That handling service is never performed by the Board?

A. No.

[fol. 1156] Q. And the Board in no way pays any part of that expense?

A. No.

Q. And is it entirely upon your determination as to whether or not that cargo should be transferred from one spot to another or high piled?

A. Well, it all depends upon the amount of space available for the cargo. When I know there is not going to be enough space available on an ordinary pier without high piling it, I so state, and then it is up to the steamship company to high pile. In other words, we have been so congested here at times that we know very well we can get the cargo on the pier if it is high piled, but if they don't high

pile it, it is impossible to get the cargo on the pier. Therefore, it has to be high piled.

Q. Do you sometimes grant bulkhead storage rates and leave the matter of requesting the shipper to assume or consignee to assume the burden of transferring or high piling to the discretion of the steamship company holding the assignment?

A. Well, I never have had that matter come up.

Q. Have the steamship companies in some instances urged that bulkhead storage rates be applied pursuant to high piling or transferring of some of the cargo?

A. No. I have never had that matter come up either.

Q. Turning to the terminals and taking State Terminal first, is it usual or unusual practice to require high piling of cargo at that facility?

[fol. 1157] A. Well, recently we had large blocks of sugar offered and my impressions were, if they wanted to handle this sugar, it had to be high piled and it was high piled.

Q. And that was because of—

A. (Interrupting:) Lack of space.

Q. (Continuing:) —of the necessity of conserving space?

A. Yes, sir.

Q. And that is quite a problem at that facility?

A. It was at that particular time; yes, sir.

Q. Assume that a 15-ton carload of canned goods arrived on the dock, do you usually require that that be high piled?

A. No, just large blocks of cargo.

Q. Are you aware of the fact that the State Terminal has a handling charge of .50 cents per ton on all general merchandise N. O. S.

A. I am not familiar with all of the ramifications of that tariff.

Q. I see. Whether it be inbound or outbound cargo, if you consider that it is necessary to conserve space, you make it a point of the granting of the terminal basis of charges which are indicated on page 22 of exhibit 64 as to forcing the shipper or consignee to high-pile the cargo; is that correct?

A. As was stated, recently we had large blocks of sugar offered that were going out intercoastal vessels, and the understanding was—I found out from the Engineering Department [fol. 1158] how high it could be piled without tak-



ing any chances of damaging the dock. The terminal operator was instructed he would have to pile it to that height, otherwise, he couldn't handle the sugar. We had to conserve the space.

Q. Before the State Terminal accepts goods on the terminal basis of charges, do they have to secure your permission?

A. Well, on the inbound movements when they make their application to me they usually state that five or six hundred tons of the cargo that is going to be discharged is going into storage.

Q. On the sugar that you referred to, before the receipt of that sugar, did the State Terminal secure your permission for the acceptance of that cargo and which was followed by your requirement that it be high piled?

A. In this particular instance it was taken up by the Board first.

Q. Now, taking up the operations at the Golden Gate Terminal, that is an unusually wide structure is it not, as compared to your other facilities?

A. It is the widest structure on the water front.

Q. And do you find the same necessity for requiring transfers or high piling of cargo there that you do on your assigned piers for State Terminal?

A. The assigned piers? I will say at the State Terminal we had the same situation in regard to the sugar. We also [fol. 1159] required them to high pile it to conserve space. We needed the space.

Q. However, if you did not need the space you would not make that requirement; is that correct?

A. That is correct.

Q. Now, what happens with some of these commodities that may not be high piled because of their inherent nature? They cannot stand high piling beyond a one-tier height. Do you just proceed to let the space be utilized without any further requirement as to penalty charges, or anything of that sort?

A. That is correct. We don't assess any penalty charges on the cargo.

Mr. Differding: Thank you, Mr. Geary. That covers all the questions I had.

Cross-examination.

By Mr. Somers:

Q. Mr. Geary, can you enlighten us on some of the points at issue at the Islais Creek Grain Terminal Corporation? First, as to the movement of ships, does not the Islais Creek Grain Terminal Corporation determine when ships may come to this particular terminal for cargo?

A. They always send me a berthing application, Mr. Somers.

Q. Is it not within their power to decline to receive a ship at its terminal on any particular date?

[fol. 1160] A. I have never heard them decline any.

Q. Is it not true that the ships must go there at the convenience of the operators of the terminal?

A. Yes, that is correct.

Q. As to the movement of grain in and out which is kept there on wharf demurrage, is it not a fact that very material quantities of grain are received at the terminal and are kept there for material periods and then move out without, well, we will say figuratively speaking, never seeing salt water.

A. Well, I couldn't answer that question.

Q. Don't you make periodic trips up through the terminals to observe operations down there?

A. I do. There might be. I have never seen any large lots of cargo removed.

Q. You have never seen any large lots of car loading down there to a material degree?

A. No, sir; I have not.

Q. Do you know whether or not any grain arrives there by rail for local consumption and moves off either by truck or rail to local mills, San Francisco mills and other users of grain and feed?

A. No, sir; I have never heard of that practice.

Q. Are you familiar with the personnel of the operators of the terminal?

A. Well, I see Mr. Coleman occasionally. What I mean [fol. 1161] by that is once every week.

Q. How about the stockholders, the President? Did you ever meet Mr. Bell?

A. I have met Mr. Bell; yes, sir.

Q. You recognize him as President of that Terminal?

A. No, I do not.

Q. He never talks to you in any official capacity so far as you know?

A. No, sir; he does not.

Q. Do you know whether Mr. Bell is in the grain business or not?

A. I couldn't tell you, sir.

Q. Are you familiar with the arrangement under which the Corporation operates at the terminal?

A. No, sir; I am not.

Q. Do you know whether they pay for any repairs to the structure?

A. I can't answer that question.

Q. Nor taxes, or insurance? You know nothing about that?

A. I know nothing about it.

Q. Well, is it not a fact that the Grain Terminal Corporation operates at this terminal as if it were the private owner of the terminal?

A. Well,—

Mr. Kilkenny: Now, Mr. Examiner, I think that is asking [fol. 1162] distinctly for a conclusion of law. It is not a fact.

Examiner Basham: What is your title?

The Witness: Chief Wharfinger.

Examiner Basham: As Chief Wharfinger would that come within your knowledge, anyway?

The Witness: Well, only that the Harbor Board does out there. We assess the demurrage charges against the grain in storage.

By Mr. Somers:

Q. Who furnishes you with a list of the grain?

A. Mr. Duncan. He is the clerk out there at the Islais Creek Grain Terminal Corporation. He furnishes us that from his records. The Wharfinger has access to his records at all times.

Q. You receive indirectly but from the Islais Creek Grain Terminal Corporation information of the movements of grain in and out so that you can properly assess your wharf demurrage charges?

A. Yes, sir; we do.

Mr. Somers: I think that is all.

Redirect examination.

By Mr. Scoll:

Q. Mr. Geary, paragraph 4 which you read into the record as being added to conditions on page 20 of exhibit 64, [fol. 1163] does that paragraph 4 which you stated was adopted by the Board of Port Commissioners appear in published form?

A. It is in the minutes of the Board; yes, sir.

Q. No. Was it published?

A. I don't think it was.

Examiner Basham: And it was not posted?

The Witness: Pardon me?

Examiner Basham: And it was not posted at your terminal?

The Witness: Of course, the minutes of the Board are available to anybody. The minutes are open at all times.

Examiner Basham: But they were not posted at the wharf?

The Witness: No, sir. They were not posted at the wharf.

By Mr. Scoll:

Q. How were the interested parties—vessels, operators, shippers and consignees—advised of that minute of the Board?

A. Well, they weren't advised of it.

Q. You testified that the free time is computed from the hour when the last slingload of cargo reaches the dock. By that do you mean that the free time would be in at the hour when the last slingload is landed and continues for twenty-four hours, so that if the last slingload reached the dock at 5:00 P. M. today, the first day of free time would end at [fol. 1164] 5:00 P. M. tomorrow?

A. Yes. The first day of free time would end at 5:00 P. M. tomorrow.

Q. Similarly, at any hour of the day the free time would run 24 hours from that hour?

A. Yes.

Mr. Scoll: That is all, thank you.

Recross-examination.

By Mr. Graham:

Q. Just one question. In connection with this checking of cargo to determine whether it is on demurrage or free

time do you take the records of the steamship company or does your company take the records of the steamship company or do your assistants themselves actually check cargo that is on the respective docks?

A. No. We check the delivery records of the steamship companies. As soon as the free time is up—Suppose the free time is up tomorrow morning at 8:00 o'clock, the wharfinger goes in there at 8:00 o'clock tomorrow morning. Suppose the ship is the San Bernadino. He checks the delivery record to see what it is.

Q. That is, he checks the delivery record against the manifest?

A. Yes, sir. He knows what is on the dock anyway the night before the cargo goes on demurrage. Most of these lots are very conspicuous.

[fol. 1165] Q. Take the case you have given. The Wharfinger checks the delivery tags against the manifest and he finds that there is certain cargo left. Then is that cargo automatically from there on assessed demurrage?

A. It is automatically assessed from then on wharf demurrage on the basis of 25 cents a ton for the first five days after the expiration of the free time and 50 cents a ton per each succeeding five-day period or part thereof.

Q. In other words, there isn't any such thing as cargo being on the dock which is not assessed demurrage?

A. All cargo is assessed demurrage after the expiration of the free time.

Q. And once assessed the demurrage is collected?

A. Yes, it is.

Q. That is both eastbound and westbound? Of course, you don't check delivery tags against the manifest on inbound cargo?

A. Well, inbound cargo, the "Guide" publishes the receiving date of the vessel and the wharfinger checks to see that cargo isn't received prior to the receipt of the vessel as listed in the "Guide."

Q. You use the "Guide" as the basis of your information?

A. We do, sir.

Q. If your vessel is late, then—

A. (Interrupting) As soon as the first cargo lands on [fol. 1166] the dock he notifies my office. We have a record of it. If the ship is late the procedure is for the steamship company to request bulkhead storage on the cargo that is

accepted, say, prior to receiving time of the vessel, and that is assessed against the steamship company. They are penalized for the fact that the vessel is late.

Q. Collected from them and paid by them?

A. Collected from them and paid by them.

Mr. Graham: I think that is all.

Redirect examination.

By Mr. Differding:

Q. Before I overlook it, Mr. Geary, what is the unit of weight and what is the unit of measurement that you use in determining these wharf demurrage charges, either on a penalty basis or a bulkhead storage basis? In other words, is it forty cubic feet for 2000 pounds that you use? Is that measurement and weight?

A. Well, we use weight or measurement, whichever yields a greater revenue. If it measures up more than it weighs, we assess it on a measurement basis.

Q. But am I correct that 40 cubic feet for 2000 pounds is your unit?

A. Yes, sir; that is correct.

Q. Just one point more that I am not clear on. You mentioned San Bernadino. That is an intercoastal vessel, is it [fol. 1167] not?

A. Yes. That is one of the Williams Dimond vessels.

Q. And the rates in that trade are based on a hundred pounds?

A. Yes.

Q. And does the ship's manifest or the delivery documents that are available to you show the measurements of this cargo?

A. No. In cases of that kind where we have lots of cargo on the dock, I might say that we have very little cargo on the dock after the expiration of the free time, and when we have cargo that measures more than it weighs, we put the stick on it.

Q. You actually do stick it?

A. We put the stick on it, yes.

Q. And I suppose that a number of these commodities that you handle frequently, why, you have got those ratios worked out as between the different types of practices used between the different commodities?



A. I have those figures in my office when we need them.

Q. But when you get a commodity that you don't have any measurement on you go out and measure it?

A. The steamship company usually does that for you.

Q. The steamship company usually does that for you?

A. Yes, in most cases, I understand. If not, we can have the wharfinger do it. Most of our wharfingers are old-time ship clerks.

[fol. 1168] Q. And, so far as you know, that has been regularly and consistently done during the time you have been in charge of handling wharf demurrage accounts?

A. The only time it wasn't done was during a strike, during a tie-up when we assessed everything on a weight basis. We have such a tremendous amount of it it would be impossible to put the stick on it.

Q. And we are to understand that the only exception to that failure of measuring cargo to determine its cubic feet in relation to weight was during strike conditions when you applied uniformly to all strike-bound cargo the bulkhead storage rate of 12½ cents per ton for seven days or fraction thereof upon a weight basis only?

A. I believe that is correct.

Mr. Differding: Thank you.

Recross-examination.

By Mr. Graham:

Q. You said that you checked delivery tags against manifests on inbound cargo. Now, do you check dock receipts on cargo that is outbound, on cargo that is received on the dock for water transport out, to determine how long it has been on the docks.

A. Well, we check with the receiving clerks. They give us that information. The Wharfinger checks it with the Receiving Clerks. He checks the receiving clerks' records. [fol. 1169] Q. Which would mean a check of dock receipts or their—

A. (Interrupting:). Yes, sir.

Q. (Continuing:). Or their compilation?

A. Hand tags, whatever they might have.

Q. So that the same system is used both as to ingoing and outgoing cargo?

A. Yes sir; that is correct.

### Redirect examination.

By Mr. Scoll:

Q. You stated that the shipping companies usually put a stick against the cargo if that is necessary, rather than having the wharfinger do it himself. Do you accept the steamship company's figures for the correct measurement in those cases?

A. We do; yes, sir.

Q. Is that the practice?

A. Yes, sir.

### Recross-examination.

By Mr. Townsend:

Q. Mr. Geary, would you please take the case of an outbound shipment and explain exactly what the employees of the State Board do with respect to that shipment and what records you obtain and use in connection with the computation of free time and wharf demurrage? I don't think it is clear in the record just exactly what you do.

A. Well, as I stated before, as soon as the first cargo arrives on the dock; for instance, if it is coastwise, it gets five days free time from that hour. In other words, suppose the cargo came in on the dock, say, eight o'clock Monday morning. Well, Tuesday morning—

Q. (Interrupting:) Just a minute. I don't mean to interrupt you. This is outbound cargo. Let us take it first when it arrives by rail and, secondly, when it arrives by motor truck.

A. Well, the wharfinger checks with the receiving clerk.

Q. Who is the Receiving Clerk?

A. Well, whoever is on there for the steamship company, like the American-Hawaiian have a receiving clerk on each one of their receiving piers.

Q. The receiving clerk is an employee of the steamship company?

A. He is an employee of the steamship company and we have access to his records at all times.

Q. So, then, the first thing that you do when cargo arrives on the dock from a truck or a rail car is to look at the receiving clerk, who is an employee of the steamship company?

A. Sometimes it is not necessary to do that because, if the dock is clear, as soon as the first lot comes in on the dock we have a record of it.

Q. How do you have a record of it?

A. The wharfinger checks it, naturally.

Q. If he happens to be there?

[fol. 1171] A. Well, he makes his rounds three or four times a day.

Q. And can he follow all of the trucks as they are unloading?

A. So long as he gets the first one, that is all that is necessary on the receiving.

Q. Well, one wharfinger can't be covering several docks at one time, can he, and checking all of the first unloads of a truck for a particular vessel?

A. He can cover three or four docks three or four times a day.

Q. Which does he use? His own check or the receiving clerk's records?

A. He uses both.

Q. In other words, he examines the Receiving Clerk's records and he goes around and every few times a day he counts everything that is on the dock?

A. No. I am talking about the first receiving. The first receiving, naturally, that's the start of the receiving time of that vessel. We are not particularly interested—suppose the cargo comes on the dock on the first day of February and the vessel is loading on the 5th day of February, we are not particularly interested because we know very well that the cargo has been loaded within the free time because as soon as the first slingload of cargo is loaded the vessel is loaded within the free time.

Q. How do you know that the vessel is going to arrive [fol. 1172] there when you think it is going to arrive?

A. Well, we know when the first lot of cargo arrives on the dock—we know when the first slingload goes into the ship.

Q. How do you know when the first lot of cargo arrives on the dock? Because, as I understand that you do that by looking at the receiving clerk's record, plus any additional check that your own wharfinger can make; is that correct?

A. I will tell you something else. We have various other means. We check with watchmen, we check with anybody

who might be on the dock at the time. We have four or five ways of checking.

Q. You must have some system?

A. Well, we do. Take the receiving clerk: Every once in a while we check up with other people just to make sure there is no slip on it.

Q. Do you ever find the receiving clerk's records wrong?

A. Occasionally, yes.

Q. And that is found by this other check that you make once in a while, is that correct?

A. Yes, that's correct.

Q. All right. Now, then, we have the first load of cargo on the dock for this particular vessel, and you have checked these various means and have found out when that arrives. Now, you are not interested, then, in when any more cargo arrives for that vessel?

[fol. 1173] A. Unless it is late to load and then we check back and find out how much cargo came in the first day, how much came in the second day, how much came in the third day and how much came in the fourth day, depending on how many days late the vessel is to load.

Q. How do you check back to find that out?

A. From the records of the steamship company and the Receiving Clerk.

Q. And you make no corroborating check by your own employees?

A. No, we do not. The wharfinger gets those records from the receiving clerk.

Q. Does the receiving clerk make an actual count of all the cargo that is deposited by a motor truck, we will say, on the dock?

A. You mean, by day?

Q. As it comes off the truck. Is he a check clerk?

A. The receiving clerk?

Q. Yes.

A. No. He gets his records from the other clerks in the dock. He gets the total number of receipts from the different clerks on the dock; maybe 10 or 15 clerks on the dock. At the end of the day he gets all the receipts from these clerks.

Q. And the check clerks are employed by the steamship company?

[fol. 1174] A. They are, yes.

Q. Now, then, what information do you use to determine when the cargo is—strike that.

What is the important thing to determine when the wharf demurrage period ends or the free time period ends? Is it the time when the first cargo is put aboard the vessel or when the vessel sails?

A. When the first cargo is put aboard the vessel.

Q. How do you ascertain that fact?

A. Well, we can get it from the dock log, or we can go aboard the ship and find out when she commenced loading. Usually the steamship companies have a rough log and we can check it from them.

Q. Does your wharfinger run around and see what time every boat started loading?

A. No, we usually know when the boat started loading. We ask the stevedores boss if we want to. But in most cases we get from the ship's rough log on the dock.

Q. In other words, generally speaking, you rely on the information furnished by the Steamship company employees?

A. Well, it is easy enough to know when a ship comes in at five o'clock at night and tells me that they are not going to work until eight o'clock in the morning, and you know when they start to work it is eight o'clock in the morning. The wharfinger can see the ship loading all right. There [fol. 1175] is no secret about that.

Q. What do you do in case of cargo that is transshipped from one vessel to another on two different docks in the Port of San Francisco? How do you compute your wharf demurrage and free time and how do you obtain the information necessary to make the computation?

A. Do you mean the cargo on the first dock beyond the free time?

Q. Any way. I want to know how you determine whether it is or whether it isn't.

A. In transit cargo is entitled to ten days free time. At the end of the seven-day period, suppose that it is foreign cargo in transit. At the end of the seven-day period we know which cargo is on the dock.

Q. Let us start at the beginning, may we?

A. Surely.

Q. Let us take some cargo. We will say that it is coming into San Francisco via an ocean going vessel from the Orient, and it is to be transshipped to an intercoastal vessel,

as an illustration, and we will assume that the two vessels dock at different piers so there must be a transfer. Will you please start at the beginning and trace your operations all the way through so we can find out how you learn how much wharf demurrage, if any, should be assessed?

A. Well, as I was saying, if it is a foreign vessel they are [fol. 1176] entitled to seven days free time.

Q. That is on the first?

A. Yes. We know that. We know how much cargo is on the dock. At the end of the seven days, if a certain amount of that cargo is in transit, you get ten days.

Q. Wait a minute.

A. I have to show you what happened. At the end of the ten days, if that cargo is on the dock and it is in transit, it is subject to demurrage and it is subject to demurrage until such time as it is removed to the second dock. However, if that cargo were removed within the ten days it would not be subject to the demurrage because it would be subject to the free time.

Q. How do you know when it is moved from the dock?

A. We can get that from the delivery clerk at the dock at which the cargo arrived.

Q. Does your wharfinger go around at the end of the day or several times during the day and ascertain from these records of the delivery clerk on the dock what cargo has been moved?

A. That is his duty; yes, sir. That is what he does.

Q. And he does that at least once a day?

A. More than once a day.

Q. All right. Let us go over to the second dock. Let us assume it is on the second dock. Is there some additional free time there if it is going on an intercoastal vessel?

[fol. 1177] A. Yes, sir. There is an additional toll.

Q. There is an additional toll and additional free time?

A. Yes; additional ten days free time.

Q. Just the same as if it were a new movement?

A. Just the same as if it were a new movement.

Q. Do you ever have a situation where cargo comes in to the dock for one vessel and is not loaded on to that vessel because the vessel is full, and is shifted to another vessel at another dock; or, first, let us take it at the same dock.

A. Well, yes. If you have cargo coming in like, we will say the American President Lines, they may have cargo coming in going intercoastal, Luckenbach or American-



Hawaiian's ship may pick it up. So long as they pick it up within the ten-day period it is in-transit cargo and there is no further toll on it. There is only one facility used, so there is only one toll assessed.

Q. The State Board assesses no service charge or receiving and delivering charge, does it?

A. No, sir.

Q. And neither does the steamship company, does it? That is normally a charge against the ship?

A. On the unassigned piers, no.

Q. What are the sources of revenue from the terminal operations of the State Board? And by that I mean, you receive tolls and wharf demurrage, and what else?

A. Dockage.

[fol. 1178] Q. Just those three? Tolls, wharf demurrage and dockage? Your space rentals or assignments—

A. (Interrupting:) Pardon me?

Q. You receive also space rentals of piers, do you not?

A. Yes, sir; we do.

Q. Is there anything else that is received by way of revenue by the State Board?

Examiner Basham: Hasn't that been developed about three times in this record?

Mr. Townsend: I did not think it was clear, but I will submit it.

By Mr. Townsend:

Q. There was one additional point that I do not think was clear with respect to this wharf demurrage, and that is how you determine whether to apply the wharf demurrage charges against the shipper or against the vessel? As I understand it, that depends upon some supposedly sailing day of the vessel. What sailing date do you use to determine whether the vessel is late or not?

A. What are you referring to? Cargoes in storage going on the vessel?

Q. Cargo that is on the dock going, let us say, in an out-bound vessel.

A. In storage or in transit cargo.

Q. Let us take in-transit, first, and then in storage next. [fol. 1179] A. If the vessel is two days late to load and, say, we had 200 tons of cargo prior to receiving time of the

vessel, well, that charge would be assessed against the ship and paid by the steamship company.

Q. How do you determine whether the ship is late to load? That is the point that is not clear to me.

A. Because she didn't load the cargo within the free time.

Q. How do you determine whether the vessel was supposed to have sailed? You don't publish a sailing schedule, as I understand it.

A. No, we don't publish a sailing schedule. We determine the free time as I told you. On coastwise cargo we give them five days free time. If they don't load that cargo within the five days, it is subject to demurrage, and that demurrage charge is against the steamship company. If the ship is late to load it is not the fault of the shipper. It is the fault of the steamship company. And that charge is assessed against the steamship company.

Q. Do you ever have any instance where wharf demurrage is assessed against the shipper?

A. No.

Q. Let us take the case of storage charges. Do you ever have any storage charges that are, you might say, waived or where the free time period is extended because of a delay of the vessel?

A. No, sir.

[fol. 1180] Mr. Townsend: That is all.

Examiner Basham: You are excused.

Mr. Kilkenny: Mr. Geary, I have one question.

By Mr. Kilkenny:

Q. I believe you testified in regard to a minute order that was made regarding the granting of bulkhead storage rates. Is that correct?

A. Yes, sir; I did.

Q. And I think you stated that that was not published, is that right?

A. That is what I said. I believe it was not published.

Q. It is a fact, is it not, that this operates also as a reduction in charges for the shippers who find themselves in that situation?

A. As I mentioned, this was adopted by the Board on account of these frequent tie-ups. You might have a steamship company tied up for seven or eight or ten days and the

Board didn't want to assess a penalty demurrage on those particular operations. So we assessed bulkhead storage.

Q. They would have no object in knowing in advance about that? They couldn't know when there was going to be a tie-up?

A. We never know.

Q. No one would know about that until the contingency actually occurred?

A. Yes, sir; that is correct. I think the reason—if I [fol. 1181] might state it rather bluntly, the reason it wasn't give too much publicity was that we didn't want too much chiseling.

Q. Do you always advise the shipper of a change in that rate? Do you always advise the shipper?

A. Yes, we advise him.

Q. And there is no way of knowing ahead of time?

A. That was put in on account of these frequent tie-ups.

Mr. Kilkenny: That is all.

Examiner Basham: You are excused.

(Witness excused.)

Mr. Scoll: Mr. Parr.

---

FRED D. PARR was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Scoll:

Q. Please tell the Reporter your name, Mr. Parr?

A. Fred D. Parr; P-a-r-r.

Q. And your occupation, Mr. Parr?

A. I am President of the Parr-Richmond Terminal Corporation.

Q. The Parr-Richmond Terminal Corporation operates a marine terminal at the Port of Richmond?

A. That's right.

Q. What physical facilities do you have there?

[fol. 1182] A. We have four terminal facilities: Two at the Inner Harbor of Richmond; one at the Outer Harbor; and one at the Western Harbor.

Q. And those consist of the usual aprons, transit sheds?

A. Three of them are the generally recognized terminal facilities of transit sheds, and one of them is merely a transfer facility for handling sugar between barges and railroad cars.

Q. Do you also have any warehouse space there?

A. No.

Q. Are your rates and regulations and rules regulated by the California Railroad Commission?

A. Yes.

Q. Is that pursuant to the statute?

A. Yes.

Q. Are you familiar with the final report of the California Railroad Commission in case 4090?

A. In a general way, yes.

Q. I would like to read to you a statement from that report which occurs on page 96 of Exhibit 61, and I shall ask you a question about it.

"Thus out of every 100 square feet chargeable to demurrage 30 square feet of aisles and 10.5 square feet of waste areas are non-revenue producing leaving 59.5 square feet as revenue producing."

[fol. 1183] Do you agree with the author's conclusion that approximately 59.5 square feet of area chargeable to demurrage is revenue producing?

A. Well, I would think that that would be correct in certain cargoes. I am not as familiar with it, however, as our Mr. Engel, who is here, and could give you better answer to that question, probably, Mr. Scoll. Of course, when you handle straight lots of sugar or petroleum products, or commodities of that character to lose less aisle space than you do where you have commodities that have different marks and have to be segregated.

Q. Would you say from your experience it was more or less than 60 per cent?

A. I think in our experience in Richmond the lost space would be a little less than that. I think we would occupy around 75 to 80 per cent of the space.

Q. The final report in this case—that is, exhibit 61, was issued May 16, 1936. Is it a fact that the direct labor costs incidental to the operation of the Parr-Richmond Terminals have increased since that date?

A. Yes.

Q. Similarly, the general office and administrative expenses have increased?

A. Yes.

Q. Has the direct labor that is used in terminal operations increased or decreased in efficiency since then?

[fol. 1184] A. It has decreased.

Q. Have your taxes increased?

A. Yes.

Q. What taxes are you referring to?

A. Both the city and county taxes.

Q. That is, taxes on your facility?

A. Yes.

Q. Are they real estate taxes?

A. Real estate taxes.

Q. You pay a franchise tax?

A. We pay a corporation franchise tax.

Q. Is that a state or municipal tax?

A. That is state. As far as our city and county taxes are concerned, I want to explain that a very small proportion of our facilities are owned by our own corporation. They are practically all owned by the city, so that the amount of increase in taxes is very small in view of the fact that there are no taxes, either city or county, on the municipally owned facilities, and on the portion of the facility which we have constructed, whereas we pay the tax to the city, but the city in turn refunds it to us to aid in defraying the original cost of the facilities.

Q. So that, in effect you actually do not pay any taxes on the facility?

A. Well we pay a county tax on the portion that we constructed.

[fol. 1185] Q. But you pay no municipal tax on that? That is refunded to you?

A. That is refunded.

Q. And on the terminals which you hold under a lease, is that correct?

A. Yes, two different leases.

Q. To leases from the City of Richmond, there are no city taxes on that?

A. No city or county taxes.

Q. Can you just tell us which terminals you hold under lease from the city of Richmond and which you constructed yourself?

A. Terminal No. 1 is held under lease from the city. Terminal No. 2 is held under lease from the city of Richmond. Terminal No. 3, the northerly half was constructed by the City of Richmond and the southerly half was constructed by the Parr-Richmond Terminal Corporation, each unit costing about \$275,000 of that joint facility. Terminal No. 4 is held under lease from the city.

I might explain that Terminal No. 1 is located out at the Outer Harbor on what is known as Ferry Point. Terminal No. 2 is located at the inner portion of the inner harbor. Terminal No. 3 is out at the inner Harbor just opposite the Ford Plant, and Terminal No. 4 is out at Point San Pablo at the point where San Francisco Bay adjoins San Pablo Bay.

Q. You state that you operate no warehouse facilities? [fol. 1186] A. That's right.

Q. Is general merchandise inbound ever stored on your terminals beyond the free time?

A. I think we have some steel that is stored beyond the free time occasionally.

Q. And what rate do you charge for such storage?

A. I am not just certain what our tariff calls for, but whatever the tariff is for wharf demurrage rates, would be our applicable charge.

Q. Do you have another storage rate besides the wharf demurrage rate?

A. No.

Q. You have only the one rate?

A. That's right.

Q. And that would apply after the free time has expired on inbound cargo for so long as the cargo might be left on the transit space?

A. That is right.

Q. And such storage would be in the transit space?

A. That is right.

Q. As a matter of fact, do the revenues which you collect in a year from wharf demurrage amount to a great deal?

A. They amount to about  $1\frac{1}{2}$  per cent of our gross revenue. That's the wharf demurrage inbound and outbound combined.

Q. Is it correct, then, to state that any storage, whether [fol. 1187] under wharf demurrage or any other storage, would be in the transit spaces of the pier sheds?



A. That is right. At our,—I might explain that out at Terminal No. 1 we have two transit sheds divided by a railroad track, all within the radius of ship's tackle. That is, stevedores handle the cargo direct to or from any point in any of these buildings.

Q. From your experience as a terminal operator, is it your opinion that the wharf demurrage rate should be a penalty rate?

A. Well, I think wharf demurrage should be a penalty rate, but I think our basis of rates is wrong. I think there ought to be a wharf demurrage rate which would be a penalty to have cargo moved off the dock when it stays beyond the free time and interferes with the normal flow of transit cargo. And then I think there should be a wharf storage rate where you will encourage the storing of freight at ship's tackle or in the transit cargoes, and that there should be warehousing which would be in spaces wholly removed from the wharf structures. In other words, I think there are the two distinct classes of storage.

Q. You, on the other hand, do not perform any warehouse services on any of your pier sheds, do you?

A. When we gave up our Oakland water front facilities, we surrendered our warehouse franchise, which was in the name of the Parr Terminal Company, and in Richmond we [fols. 1188-1193] have never had any warehousing facilities nor franchise.

Q. Does the Parr-Richmond Company perform any storage services that are not in connection with transportation?

A. No.

Q. By water?

A. That's right.

Q. You have only the one rate; that is, the wharf demurrage rate?

A. That's right.

Q. Wharf storage?

A. That's right.

[fol. 1194] JOHN P. VENTRE resumed the stand and further testified as follows:

Direct examination.

By Mr. Seoll:

Q. What are the physical facilities of the Howard Terminal?

A. Well, Howard Terminal consists of about 15 acres of land owned by private ownership on the Oakland Water-front, on the Oakland Inner Harbor. They operate the private land facility as well as properties which they lease from the Port of Oakland, part of those being submerged lands off shore, which it is necessary for us to use for ingress and egress from our properties.

Q. Your terminal properties consist of how many pier sheds?

A. They consist of what we designate as six units, and those are subdivided by partitions and walls into a total, I believe, of 15 or 16 units. I would have to look up the records to make sure.

Q. And your facilities are deep water terminal facilities?

A. We operate deep water wharfinger facilities and also a public warehouse facility under the laws of the State of California.

Q. Your rates, rules, regulations and practices are regulated by the California Railroad Commission?

A. They are.

[fol. 1195] Q. Are you familiar with the final report of the California Railroad Commission in case No. 4090?

A. I am.

Q. Introduced in this record as exhibit No. 61, I should add. I would like to read to you a sentence on page 96 of exhibit 61, which reads as follows:

"Thus, out of every 100 square feet chargeable to demurrage, 30 square feet of aisles and 10.5 square feet of waste areas are non-revenue producing, leaving 59.5 square feet as revenue producing."

Do you agree with that statement?

A. We do.

Q. The report of the California Commission referred to was made or issued on May 16, 1936. Have the direct labor costs of operation of your terminal increased since that time?

A. They have.

Q. Similarly, has your general office and administrative expense increased?

A. They have.

Q. Can you state whether the direct labor involved in the operation of the terminal has been more or less efficient since 1936?

A. It is less efficient.

Q. What is the situation with respect to taxes since that time?

[fol. 1196] A. Well, I believe the property taxes are about the same; very little difference, if any. The payroll taxes, such as social security and unemployment taxes, have been increased considerably.

Q. And, similarly, supplies used in the operation of the terminal; has the expense for supplies increased?

A. Some of them have, yes.

Q. From your experience as traffic manager of the Howard Terminal can you state whether competition among the terminals in the San Francisco Bay region has affected the level of the wharf demurrage rates?

A. I would say that it has kept them depressed.

Q. Similarly, can you state whether such competition has affected the application of the rates published in the respective tariffs? By that I mean, do you have any knowledge whether there is any leniency in the application of rates among the various operators?

A. I know of no waiver of actual tariff charges that are filed with the Commission.

Q. You stated that you operate both a warehouse and a terminal. Goods that are on the terminal beyond the free time that have moved in inbound transit, where are they stored while they are under wharf demurrage?

A. Well, they are stored in the various units; that is, both transit and what may be termed "semi-transit" units. [fol. 1197] That is, our buildings are probably built a little different than some of the other terminals. We have two piers which extend into what we call the estuary or the water front, and then we have built our storage facilities and part of our transit facilities inland rather than going up in the air.

Q. The goods that remain in the transit sheds under wharf demurrage, are they ever high-piled?

A. They are.

Q. At your convenience?

A. Yes, entirely at our convenience.

Q. When they are so high-piled is a charge assessed to the consignee?

A. There is no charge assessed by us for high-piling.

Q. When these goods move back to the other storage places to which you have referred, a transfer cost is entailed; is that not correct?

A. Well, there is no transfer, as you might call it. There is a handling cost that is entailed and that is charged with a handling in and out charge assessed on all our warehouse storage. That is, all our warehouse storage has a handling in and out charge attached to it.

Q. And that is a charge which is billed to the consignee or owner of the cargo?

A. It is.

Q. Do you permit parcel deliveries from cargo which is stored in the transit sheds under wharf demurrage?

[fol. 1198] A. Yes; we do.

Q. Do you make a charge for that?

A. No, we don't. That is really part of a steamship agent's function during the free time period.

Q. After the free time period has expired and such goods are under a wharf demurrage charge, so long as they are in that status do you make any charge if there are parcel deliveries?

A. If they are in the wharf demurrage status there is no charge whatever for handling, other details or reports of any kind.

Q. Do you perform any services in connection with parcel deliveries while the cargo is in wharf demurrage on the transit sheds?

A. We check them out for deliveries. It is necessary to assemble them in order to conserve space; that is, when there are several varieties in the ship and one or two of the varieties are completely delivered and the other two might be piled 10, 15 feet apart. Naturally, to conserve space we draw them together for our own operating convenience.

Q. But no charge is made for that?

A. No charge is made for that.

Q. Do you allow any storage on your transit spaces other than storage under wharf demurrage rates?

A. We do, at times, have warehouse storage there, yes. That is, we sort of interchange the facilities at times to suit [fol. 1199] our convenience rather than move the cargo.

Q. And while such goods are under warehouse storage you assess the warehouse rate?

A. The warehouse rate and the warehouse handling in and out charge.

Q. That handling in and out charge would cover the movement of the goods on to the shed or on to the transit space and later off, is that correct?

A. Well, it would move it from the transit space which we more or less consider is the warehouse platform, being the warehouse is adjacent to the transit shed, or in some sections where it might be a section of an otherwise transit shed, it is deposited on that transit shed, and we, in theory, move it from that platform, which would otherwise be the warehouse platform.

Q. You say you move it "in theory." Do you actually move it?

A. At times we do, yes, according to the particular position of it that it is laying in.

Q. Do you make that in and out charge on the basis that this is warehouse storage and the in and out charge applies to all warehouse storage?

A. Yes. And I would say that practically all the warehouse storage is actually moved.

Q. You do publish a warehouse tariff?

A. We are members of the California Warehouse Association. [fol. 1200] The tariff is published by the Association.

Q. That is the tariff which is in the record?

A. No, that is not. That is the terminal tariff you have there.

Q. The warehouse tariff is in the record as exhibit 83?

A. That's right.

Q. Do you occasionally place cargo that is in the wharf demurrage status in your warehouse facilities?

A. We sometimes use one of the two sheds that has been designated as a warehouse for the handling of wharf demurrage facilities,—wharf demurrage cargo, rather.

Q. And accordingly, wharf demurrage cargo is stored in such places?

A. Yes.

Q. And so that would be correct to say that you use your warehouse and your transit spaces interchangeably into wharf demurrage and public warehouses?

A. To a limited extent. I think that would require a little broader explanation.

Q. Go ahead and explain it, if you can.

A. Well, at certain times when the facilities are not very well pressed or filled with transit cargo, if there is cargo coming off a steamer, and we know that it is going to be placed in storage stock, or if it is declared for storage after it has been laid on the warehouse,—rather, on the transit facility,—we may use that particular unit as a warehouse. [fol. 1201] On the other hand, when we are busy, and we find that the transit cargo is filling up the so-called transit space, as a matter of convenience we may shove part of that into our unused portion of our warehouses. That is, we designate such building more or less as warehouses and others as units for the purpose of accounting for the purpose of the Railroad Commission's records.

Q. Do you store goods under some other rate than the published warehouse rate or the wharf demurrage rate at any time?

A. No. We have no other storage other than that published in the warehouse tariffs, and that is published in our terminal tariff.

Q. So that there are only the two storage rates that might apply on your terminals?

A. On any one commodity, yes.

Q. On cargo that is in a wharf demurrage status inbound, do you issue any sort of receipt that is negotiable?

A. On any cargo which we handle on a wharf demurrage basis we issue what we call a possession receipt. If it is handled on a warehouse basis we issue a warehouse receipt.

Q. The warehouse receipt, of course, would be the warehouse receipt that is customarily used by warehousemen in California, is that correct?

A. By the Warehouse Association; the standard form.

[fol. 1202] Q. The possession receipt, is that a negotiable receipt?

A. Either negotiable or non-negotiable. We issue both.

Q. Depending on whichever is requested?

A. Yes, sir.

Q. Does Howard Terminal lease space to industrial concerns?

A. Not on the wharfing facilities. We do have a lease on the adjacent property.

Q. How is that property referred to?

A. Well, included in this 15 odd acres that I spoke of there are about 8½ acres which are devoted or declared as wharfing property for the purpose of cost accounting and



for our usual run of business. Part of it is declared as warehouse units, and part of it is non-public utility operations; industrial sites.

Q. And it is the non-public utility operations, as you classify it in your accounts, that you lease out?

A. That is; Yes, sir.

Q. Are any of these spaces that you lease out located adjacent to the transit sheds?

A. They are. That is, I might shorten that to say that we only have one lease of shippers' cargo, as you might say it, which is the Kieckhefer Container Company. It is a fiber board manufacturer, and a building was built according to their specifications and for their actual use aside and apart from the wharfing facilities. As the wharfing facilities grew they crowded up to the time when they are [fol. 1203] actually adjacent to this property. The only other lease on the property is a lease made to the Standard Oil Company which has been in existence for about 25 or 26 years, and it covers only the use of a bulk fuel oil storage tank and pump which is used for the handling of bulk fuel oils from their plant to our properties by barged, pumped through a pipe line, stored into storage tanks and used for local delivery around the city of Oakland.

Q. And those are the only two industrial leases you have?

A. Those are the only two industrial leases we have.

Q. Do you have any other leases of any kind?

A. No, we have no other leases.

Q. Will you produce copies of those leases for the record?

A. We can; yes, sir; I might correct that. I don't believe we have a copy of that Standard Oil Lease. It is so ancient and so old, I think it was just a question of going on. I can check our records to see if we have. If we have, I will be glad to furnish it.

Q. I don't necessarily require file copies. If they are copies that are certified to be correct copies of whatever copy you have in your file that will be sufficient?

A. Yes, sir.

Q. From your experience as a terminal operator is it your opinion that the wharf demurrage rate should be a penalty rate?

The Witness: Read that question, please.

[fol. 1204] (The pending question was read by the reporter as above recorded.)

A. Well, it is our opinion that the wharf demurrage rate should not be based on cost. It should be in the nature of a penalty or a semi-penalty. It should not be prohibitive yet it should encourage the clearance of the dock within a reasonable length of time.

By Mr. Scoll:

Q. From your knowledge of the operations of your terminal and the practices of other terminal operations in the San Francisco Bay region can you state whether the present wharf demurrage rate actually constitutes a penalty rate?

A. The present wharf demurrage rate on our properties?

Q. Not only on your properties, but those which are in the published tariffs introduced in this record, with which I think you are probably familiar.

A. Well, I mean, do you mean in the published tariffs of the private operators or the published tariffs of the San Francisco terminals?

Q. Excluding the San Francisco Harbor Board, which has a peculiar tariff arrangement of its own, and taking only the East Bay Terminals, do you consider that the rates now in effect by private terminals in the East Bay and the Port of Oakland are penalty rates?

A. No. We don't consider those penalty rates. They are [fol. 1205] storage rates reduced, you might say, to a daily basis.

Q. Have you ever given any consideration as to what a proper penalty storage rate ought to be in the East Bay area?

A. Yes, I have.

Q. What would you say that is?

A. Well, it is my opinion that the question of a demurrage rate must be handled separately in the trade; that is, the eastbound and the westbound trade. I think that has been more or less recognized through the testimony of Mr. West here the other day, who testified as to the practices in the northwest, including Puget Sound and Portland, where they have a westbound rate and an eastbound rate that is 50 per cent of the westbound rate. It is also the practice on the San Francisco assigned docks, which was testified here today, that eastbound and westbound present two separate

problems. To my knowledge, the tariffs at Los Angeles are similar, and we feel that they are different entirely in the operation of the type of service that is required and the control you have over the cargo.

Q. Taking the westbound movement—by that you mean, do you not, inbound movement rather than just westbound?

A. Yes. Commonly we refer to the inbound—that is, coming in off of vessels—as westbound. The proper terminology would be inbound cargo and that going to vessels be referred to as outbound cargo.

[fol. 1206] Q. Eastbound cargo you refer to as the outbound?

A. As the outbound cargo, yes, sir.

Q. Taking the inbound movement, what do you think a proper wharf demurrage rate would be on that movement in the East Bay area?

A. Well, from the studies we have made of it and basing it on comparison and the results used, it should be probably in the neighborhood of five cents.

Q. That is, five cents per day per ton?

A. Yes, sir.

Q. Let us take the outbound movement. What is your opinion of a proper rate in connection with that movement?

A. I can't say that I have come to that definite conclusion on that, but I understand from the testimony of Mr. West the rates they set up there had answered the purpose, although I think his rate was possibly a little bit low. I understand the rates here in San Francisco answer the purpose, and, they vary with time. I don't know that the time element should vary the rate if it is a demurrage rate. I would probably say about 50 per cent. of the westbound.

Mr. Graham: That is 2½ cents?

The Witness: I would say about that.

By Mr. Scoll:

Q. Is it your opinion that the rate should be on a daily basis or on a period basis?

[fols. 1207-1305] A. It is my opinion that the demurrage rates should be on a daily basis. The reason for that is that, if you put it on a period basis, after any one particular period is paid for there is no inducement or no reason why the cargo mover would remove his cargo regardless of what the length of that period is; that is, whether it is five days

or any other days. That is, after he has once paid the period it may remain there. If the penalty rate is made to encourage the removal of cargo, I think it should be made on the basis of daily computations. If it is a storage rate, I believe it should be based on a monthly term, plus a receiving and delivering charge.

[fol. 1306] S. M. GRAHAM was thereupon called as witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Differding:

Q. Will you give the reporter your name and business address, Mr. Graham, please?

A. S. M. Graham; Encinal Terminals; Alameda.

Q. What position do you occupy with Encinal Terminals?

A. I am the terminal agent.

Q. How long have you been so employed?

A. 15 years.

Q. What did you do prior to that time?

A. I took care of the revenue billing.

Q. How long have you been continuously employed by Encinal Terminals?

A. Fifteen years.

Q. And during all of that time have you been thoroughly [fol. 1307] familiar and had to do with the handling of wharf demurrage and free time practices and the rates and rules in connection therewith?

A. Yes.

Q. You were familiar with the wharf demurrage practices applicable at Encinal Terminals prior to filing of tariffs requested by the California Railroad Commission in 1929?

A. I am.

Q. What was the basis of wharf demurrage charges in effect prior to 1929?

A. The first rate that I can recollect is 12½ cents per ton per week. Prior to 1929 there were several other bases of rates which ended up in 1929 with a basis of cents per ton per day.

Q. Did that basis of cents per ton per day have your approval?

A. Well, the rates as I recall them were discussed and they may or may not have had our approval in all regards, but a competitive situation arose whereby all of the terminals were forced to accept these rates of cents per ton per day.

Q. The terminals you are referring to were those on the East side of the Bay?

A. That is correct.

Q. Principally the Port of Oakland, Howard Terminal?

A. That is correct.

[fol. 1308] Q. And at that time also the Parr Terminal Company operating facilities in Oakland Harbor?

A. That is correct.

Q. Since 1929 there has been little or any change in your wharf demurrage practices, isn't that correct, even up to the present time?

A. Very few changes.

Q. And there has similarly been little change, if any, in the free time periods granted?

A. That is correct.

Q. Has Encinal Terminals made any effort to adjust the wharf demurrage practices more in accordance with such costs as it may have found to conduct the operations?

A. Yes.

Q. And there has been little success, if any, in that direction?

A. None whatsoever.

Q. In connection with exhibit 61 in this case, which includes among other things an extended discussion of wharf demurrage practices and analysis of demurrage costs, do you find in your handling of wharf demurrage cargo that there is a cost for the checking of demurrage cargo on or to the shipper or consignee?

A. Yes.

Q. Also for the high piling and breaking down of cargo necessarily caused by the requirement of conserving space?

[fol. 1309] A. Yes.

Q. And also a miscellaneous charge for the moving, shifting or transferring cargo to conserve space?

A. Yes.

Q. By the way, is it also true, Mr. Graham, that you have been in charge of the accounting practices and the books of Encinal Terminals for a long period of time?

A. Yes.

Q. And have had frequent occasions to make studies of those accounts for determining the costs of various types of services performed?

A. Yes.

Q. I show you pages 100 and 101 of exhibit 61, having to do with variable and non-variable overhead costs. Do they all represent items which are applicable on your facility to the handling of wharf demurrage cargo?

A. Yes.

Q. Do you agree with the statement appearing on page 96, which I will now read:

"Thus, out of every 100 square feet chargeable to demurrage, 30 square feet of aisles and 10.5 square feet of waste areas are non-revenue producing, leaving 59.5 square feet as revenue producing."

A. Yes.

Q. You have made checks on your own account to support [fol. 1310] the answer you have just given?

A. Yes.

Q. I now turn to Diagram 1 of Encinal, exhibit 61, which is a plan of Encinal Terminals as it purportedly existed in 1936. Does that plan correctly portray the situation as it exists today?

A. Yes.

Q. In 1935 and 1936 it is indicated by exhibits 60 and 61 that certain warehousing operations were conducted by Encinal Terminals. Are those operations still conducted today?

A. Yes.

Q. And they are conducted generally in what unit of your facility?

A. Partially in shed A and partially in shed C, with the larger portion of the warehouse operations in shed C.

Q. So you have for the storage of cargo on Encinal Terminals today your wharf demurrage rates and practices as indicated in your tariff, exhibit No. 72, and the public warehousing as indicated by exhibit 85, to which you are a participating party?

A. Yes.

Q. By "you" I mean Encinal Terminals.

A. That is correct.

Q. What is the usual practice followed by Encinal Terminals [fol. 1311] in placing goods within the areas used for public warehousing?



A. Well, when goods are held on the warehouse spaces usually they are held in Unit C and are contained within areas surrounded by fences and held separate from the transit operations in the balance of the Unit.

Q. A shipment when arriving by Intercoastal vessel and put to point of rest in the transit shed by the stevedores and you are subsequently instructed to place that in your public warehouse areas, how is that removed from the point of rest in the transit shed to the public warehouse area?

A. The employees of Encinal would take the goods from the first point of rest and physically move them into the warehouse areas.

Q. And, likewise, if goods were to be removed from the public warehouse areas for subsequent water movement, would your warehouse employees physically transport the goods from the public warehouse areas to a point of rest on the docks?

A. Yes.

Q. At no time have the Stevedores employed by the vessels had access to the public warehouse areas?

A. At no time.

Q. Did you hear the testimony of Mr. Ventre yesterday with respect to the handling of distribution accounts?

A. Yes.

[fols. 1312-1325] Q. I show you pages 106 and 107 of exhibit 61 which purport to illustrate a typical distribution account handled by a terminal company on wharf demurrage. Can you state that Encinal Terminals has had experiences of the kind shown on these two pages?

A. The Encinal Terminals has had experience of that kind.

Q. And they are today?

A. Not as much as in the past.

Q. Can you say that that may be partly answered by the fact that you have succeeded in persuading some of your users that a public warehouse basis is the proper basis for that type of storage?

A. That is correct.

Q. And you agree with Mr. Ventre in that respect?

A. That is correct.

Q. And yet you have others who still insist upon the cheaper wharf demurrage basis?

A. Yes.

[fol. 1326] Mr. Differding: I have one or two questions I overlooked:

By Mr. Differding:

Q. Isn't it true, Mr. Graham, that the rates covering the volume of your commodities handled on wharf demurrage have not been increased for the past four or five years?

A. Generally speaking, that is so. That is, any increases which would cover a volume of the commodities named in the tariff. There may have been one or two.

Q. But, generally speaking, that is a fact?

A. That is correct.

Q. And what has been the situation as to the increased cost to Encinal Terminals in providing wharf demurrage service?

A. Those costs have increased.

Q. Does that include the physical handling of the goods by dock labor, whether it is transferring, high piling, or otherwise shifting the cargo?

[fol. 1327] A. It does.

Q. Including cleaning?

A. Yes.

Q. Checking of the cargo into and out of demurrage areas?

A. Yes.

Q. The billing, general office and overhead expenses?

A. Yes.

Q. How about property taxes?

A. Property taxes, I would say, would stay about the same over the period of years that we are talking about. However, the largest increase that we have had under the heading of "Taxes" are the so-called social security taxes.

Q. Payroll taxes?

A. That is correct.

Q. And there has been some increase in supplies and materials used?

A. Yes.

Q. Are there any others?

A. It appears generally in looking over the accounts that practically all of the costs of operation have increased in the last few years.

Q. What has applied to the cost of providing services to the vessel and set forth in your tariff as service charges and

dockage and to the cargo in the form of tolls have applied similarly to the cost providing wharfinger services?

[fols. 1328-1363] A. Yes. The costs throughout our service have been very materially increased.

Q. There has been no decrease in any of these costs?

A. None whatsoever.

[fol. 1364] Redirect examination.

By Mr. Differding:

Q. I have one question, Mr. Graham. After listening to your testimony I take it that you like certain of the other witnesses, who subscribe to the proposition that each of the users of your facilities, should pay in proportion to their use of those facilities as closely as possible as it can be obtained. Is that correct?

A. That's correct.

Mr. Differding: That is all.

Examiner Basham: You are excused, Mr. Graham.

(Witness excused.)

[fol. 1365] Mr. Differding: I will call Mr. Bailey.

LEON A. BAILEY was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct examination.

By Mr. Differding:

Q. Mr. Bailey, will you give the reporter your full name and business address, please?

A. Leon A. Bailey; 216 Pine Street.

Q. What is your business, Mr. Bailey?

A. Among other things I am Secretary of the Warehousemen's Association of the Port of San Francisco, and of the California Warehousemen's Association, and Tariff Agent for approximately 100 public utility warehousemen operating at different points in California.

Q. Will you describe, first, what the Warehousemen's Association of the Port of San Francisco is?

A. It's an unincorporated, voluntary trade association representing the best interests of the industry generally in San Francisco and Oakland.

Q. And, next, what is the California Warehousemen's Association?

A. That serves the same purpose except that it blankets the entire state.

[fol. 1366] Q. I show you Exhibits 85 and 86 in this proceeding and I ask you if you are not the Mr. L. A. Bailey appearing there as the publishing agent.

A. I am.

Q. And how long have you been publishing agent for the California Warehousemen's Association?

A. I have acted as tariff agent for the San Francisco and Oakland warehousemen since 1913.

Q. I notice on page 2 of Exhibit 85 some 20 or 25 names of participating warehouses and, as the record in this proceeding indicates, Encinal and Howard Terminals, are two of the public wharfingers who are also parties to your tariff. Are there any others engaged in the wharfinger business who are parties to this tariff?

A. No.

Q. I would like to ask you next, Mr. Bailey, in connection with Exhibit 86, which is your Warehouse Tariff No. 3-E and specifically with reference to Rule 10, which states among other things: "Rates named herein are considered special and compelled and influenced by competitive circumstances. Rates and commodities not shown herein will be found in California Warehouse Tariff Bureau, Warehouse Tariff No. 1-E C. R. C. No. 83 of L. A. Bailey, Agent, supplements thereto or reissues thereof," which is Exhibit 85. Can you tell me whether or not some of these special, [fol. 1367] compelled and influenced by competitive circumstances include that of the terminal operators on San Francisco Bay, practically all of whom are named as respondents in this proceeding?

A. Yes.

Q. Is it also true that in addition to these same terminal operators that also includes some of the practices and rates and charges in effect at the assigned piers at San Francisco?

A. Yes.

Q. Does it also include the two terminal facilities known as State and Golden Gate Terminals?

A. Yes.

Q. Can you state approximately how long ago it was that the warehouses in San Francisco first found it necessary to publish special depressed rates to meet the competition for demurrage cargo or storage cargo on the San Francisco piers?

A. That's rather difficult to answer. I will try and answer it this way. In the early years the wharf demurrage rates on the San Francisco water front were either the bulkhead storage rate at twelve and a half cents per ton per week, which involved transporting the freight to the land end and which, I believe, at that time was at two piers, one on each side of March Street; or straight penalty demurrage rate of 25 cents a ton for the first five days and 50 cents per ton for each succeeding five days. That competition [fol. 1368] was not considered necessary to compel the reduced warehouse rates; but with the establishment of the per ton per day rates on the Eastbay and the consequential establishment of warehouse service at the State Products Terminal, we began to feel the pinch of competition.

Q. If I recall the testimony of Mr. Gates correctly, they first set up the State Terminal with the special rates, where for the first time they departed from the basis of what had been in effect for many years, and was 1927 approximately the date that you had in mind?

A. I would say that is about it.

Q. And that was about the same time that you found it necessary to publish similar rates to meet the per day per ton basis in effect at the Eastbay terminals?

A. I think I could answer, "Yes." It is not so much from—our problem is not so much the actual depressed rates that we have published. It is the threat of competition which prohibits us from increasing rates based on increased costs to what we consider to be a compensatory level.

Q. Will you state briefly the history of the warehouse rate structure in the San Francisco-Oakland area for the last 13 years; that is, subsequent to 1937 to date.

A. I don't quite understand you.

Q. Have you been able to put in any general increases in [fols. 1369-1432] your warehouse charges?

A. Our first general increase in that period of time was on June 1, 1938, when it was absolutely necessary to increase our rates per se, because of sharply increased costs, particularly increased labor costs through higher wages and a decline in labor efficiency.

Q. And the result of that has been, if there were a spread in the rates previously, it has increased that spread; is that correct? Comparing the warehouse charges with the wharf demurrage charges at these various terminals?

A. Generally speaking, although in that increase there were instances where the increase was not sufficient because of the competition.

[fol. 1433]

#### Proceedings

Examiner Basham: Come to order, please.

Mr. Scoll: Mr. Examiner, at the hearing which adjourned in February several exhibits were introduced without copies being provided. I have had some copies made of these exhibits and I should like to distribute them now.

The first one is Exhibit 65. The next one is Exhibit 103. The next one is Exhibit 108.

There is a correction to be noted on these copies which I am distributing. Exhibit 108 was put in by Witness Bailey. These copies show that it was the Witness Ventre. So the Respondents who receive copies can make the correction on them.

Mr. Examiner, that completes the exhibits which were introduced at the February hearing for which no copies were available at the time, and so that Respondents now have copies of all exhibits which were introduced at that hearing, except Exhibit 61. It was understood that there were only a few copies available. It is a rather voluminous document and the Respondents, I understand, are willing to dispense with having additional copies made since most of them already have copies of that exhibit.

May we go off the record, please?

Examiner Basham: Off the record.

(Remarks outside the record.)

[fol. 1434] Mr. Scoll: Mr. Examiner, after the recess on Wednesday last I communicated with counsel for the several Respondents who are involved in this issue which we



are hearing now, the question of the cost of wharf damage or storage, and arranged that at this time the various accounting schedules and statements that are being prepared by the Respondents would be introduced. These accounting statements have been prepared by the Respondents for the purpose of making it unnecessary to produce their books and original records and secure the information by the examination of these books and records.

I have before me now the various accounting schedules of certain of the Respondents that were handed to me between last Wednesday and today, and I am going to proceed now to introduce these into the record, following which I plan to call upon those Respondents who have not furnished the accounting schedules that we discussed, and as they are produced I shall put them into the record.

This procedure will do two things:

1. It will secure for the record various accounting statements for all of the Respondents at the same time so that no one will have an opportunity during the recess before he produces his own statements to examine those of some other Respondent.

2. It will enable the various Respondents to prepare such [Vol. 1435] questions as they want to ask of the various accounting officials of the Respondents and ask those questions at a future time.

I propose in that connection to put all of the accounting statements into the record at once this morning and then ask for a brief recess, during which time I can look at these accounting statements. I have not had a chance to look at them myself, and also counsel for the Respondents can look them over and then we can reconvene and proceed with such questions as may be necessary to explain whatever items have to be explained in these schedules.

Mr. Geary: In other words, there will be no cross examination of any witness until all of the accounting exhibits have been introduced on behalf of all of the Respondents?

Mr. Scoll: That is my intention. If that is agreeable to other counsel and to the Examiner I would like to proceed that way.

Examiner Basham: Go ahead.

Mr. Scoll: The exhibits I have first concern the Port of Oakland, and I should like to offer at this time a map of Oakland Harbor.

In connection with the Oakland exhibits, Mr. Examiner, it is understood between Mr. Jones, who is counsel for Oakland, and myself, that the various exhibits that are offered [fol. 1436] here by me are offered by the Commission and not by Oakland. Oakland stands on its position that the Commission has no jurisdiction over them in this case, and are merely furnishing this information at my request in order to be cooperative and enable us to finish the taking of testimony. So that it should be understood that the offering of these schedules and various diagrams concerning the Port of Oakland does not in any way constitute an admission by the Port on the question of jurisdiction.

I offer the map of the Port of Oakland, Mr. Examiner. Examiner Basham: It will be received as Exhibit No. 118.

(The map referred to was marked "Commission's Exhibit 118" and received in evidence.)

Mr. Scoll: The next offer is a diagram of the Outer Harbor Terminal, Wharf Areas of the Port of Oakland. There are only two copies of this available at this time, but Mr. Jones has assured me that they can run off photostats of this in any number and that other copies will be forthcoming if the Respondents desire them.

For the purpose of the record and to explain to the Respondents, these are merely surveyor's diagrams in facsimile of the various structures named, the first one being the Outer Harbor Terminal Wharf Areas.

[fol. 1437] Examiner Basham: It will be received. Exhibit 119.

(The diagram referred to was marked "Commission's Exhibit 119", and received in evidence.)

Mr. Scoll: I see no extra copies, but if the Respondents want them they can obtain them from the Port of Oakland.

Mr. Jones: If I might interrupt, if you will indicate how many you need I shall bring them over tomorrow.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

Mr. Scoll: The next offer, Mr. Examiner, is Grove St. Pier, Inner Harbor Areas.

Examiner Basham: Received. Exhibit 120.

(The map referred to was marked "Commission's Exhibit 120", and received in evidence.)

Mr. Scoll: And, Mr. Jones, will you supply all of these diagrams, twenty copies of each?

Mr. Jones: Yes.

Mr. Scoll: Thank you very much.

The next one is Inner Harbor, 9th Ave. Pier.

Examiner Basham: Received. Exhibit 121.

(The map referred to was marked "Commission's Exhibit No. 121", and received in evidence.)

[fol. 1438] Mr. Scoll: The next one is Terminal Building — "C" — Areas of the Outer Harbor Terminal,

Examiner Basham: Received. Exhibit 122.

(The map referred to was marked "Commission's Exhibit 122", and received in evidence.)

Mr. Scoll: The next offer is a diagram entitled "Outer Harbor Terminal, General Plan."

Examiner Basham: Received. Exhibit 123.

(The map referred to was marked "Commission's Exhibit 123", and received in evidence.)

Mr. Scoll: The next offer is Outer Harbor Terminal, Typical Cross Section.

Examiner Basham: Received. Exhibit 124.

(The map referred to was marked "Commission's Exhibit 124", and received in evidence.)

Mr. Scoll: The next one is Inner Harbor Terminal, Typical Cross Section.

Examiner Basham: Received. Exhibit 125.

(The map referred to was marked "Commission's Exhibit 125", and received in evidence.)

Mr. Scoll: The next offer is Port of Oakland Operating Report, Fourth Quarter, Twelve Months' Period Ended June 30, 1940, Fiscal Year 1939-1940.

Examiner Basham: It will be received as Exhibit 126.

[fol. 1439] (The operating report referred to was marked "Commission's Exhibit 126", and received in evidence.)

Mr. Scoll: Mr. Examiner, I have several schedules which are details supporting Exhibit 126, and I believe

they should be numbered in the record as "126-A", "B," and so forth, and I shall offer them with that thought in mind.

The first one is Port of Oakland Expenses, Fiscal Year 1939-40, which is a break-down of the accounts labeled "Personal Service," "Supplies & Materials," "Light, Power, Heat & Water," and so forth. I will offer that as Exhibit 126-A.

Examiner Basham: Received.

(The schedule referred to was marked "Commission's Exhibit 126-A," and received in evidence.)

Mr. Scoll: The next schedule is entitled "Port of Oakland Construction Costs of Structures," and it is a break-down of accounts appearing in 126 and should be labeled "126-B."

Examiner Basham: Received.

(The schedule referred to was marked "Commission's Exhibit 126-B," and received in evidence.)

Mr. Scoll: The record should show, Mr. Examiner, that this schedule, Exhibit 126-B, in addition to containing a break-down of construction costs also contains detail of maintenance expense for the structure with which we are [fol. 1440] concerned.

The next offer, Mr. Examiner, is an explanation of the distribution of the allocation of accounts in connection with the Port of Oakland accounting system. It is in the form of a letter dated October 5, 1940 to Mr. Carlon, signed R. N. Ricketts, Chief Port Accountant.

Examiner Basham: Received. Exhibit 127.

(The letter referred to was marked "Commission's Exhibit 127", and received in evidence.)

Mr. Scoll: The next offering, Mr. Examiner, is a statement showing the unit costs of pier and wharf construction of the Port of Oakland. It is a one-page letter-size statement dated October 5, 1940.

Examiner Basham: Received. Exhibit 128.

(The statement referred to was marked "Commission's Exhibit 128," and received in evidence.)

Mr. Scoll: The next offering, Mr. Examiner, is a chart of the accounts of the Port of Oakland. There are only

an original and one copy of this. It is merely an outline of the accounts as they are kept by the Port of Oakland. If copies are desired they can be furnished.

Examiner Basham: Received. Exhibit 129.

(The chart referred to was marked "Commission's Exhibit 129," and received in evidence.)

Mr. Scoll: I might state that, as indicated, it is the chart [fol. 1441] of the expense accounts only.

That concludes the schedules, diagrams and other documents that I have to offer in connection with the Port of Oakland at this time.

The next offer is a determination of wharf demurrage cost of Howard Terminal based on the formula of Ford K. Edwards. This was prepared by Howard Terminal at my request and was furnished to me in time so that I could have photostatic copies made for the other Respondents.

Examiner Basham: Received. Exhibit 130.

(The document referred to was marked "Commission's Exhibit 130," and received in evidence.)

Mr. Scoll: The next offer is a summary of the accounting data contained in detail in the determination of wharf demurrage cost of Howard Terminal based on the Edwards formula.

Examiner Basham: Received as Exhibit No. 131.

(The summary referred to was marked "Commission's Exhibit 131," and received in evidence.)

Mr. Scoll: Mr. Examiner, that completes the schedules that were delivered to me before this hearing. I should like now to ask for a brief recess so that I can collect the rest of them from the rest of the Respondents here and put them in.

Examiner Basham: We will have a five-minute recess. [fol. 1442] (A short recess was taken.)

Examiner Basham: Come to order, please.

Mr. Scoll: The next offer, Mr. Examiner, is a folder of the Parr-Richmond Corporation showing the location and detail of the Parr-Richmond facilities.

Examiner Basham: Received. Exhibit 132.

(The folder referred to was marked "Commission's Exhibit 132," and received in evidence.)



Mr. Scoll: The next is a statement showing total revenues and expenses of Parr-Richmond Terminal Corporation for the years 1935 to 1939, inclusive.

Examiner Basham: Received. Exhibit 133.

(The statement referred to was marked "Commission's Exhibit 133", and received in evidence.)

Mr. Scoll: The next offer is Balance Sheet as of December, 1939, two pages, of the Parr-Richmond Terminal Corporation.

Examiner Basham: Received. Exhibit 134.

(The balance sheet referred to was marked "Commission's Exhibit 134", and received in evidence.)

Mr. Scoll: The next offer, Mr. Examiner, is a 15-page statement prepared by the Board of Harbor Commissioners at my request and containing all of the accounting information which we requested them to furnish and worked out by the accountant of the Board of Harbor Commissioners in [fol. 1443] cooperation with Mr. Carlon. Attached to it is a letter of transmittal dated October 5, 1940 addressed to the United States Maritime Commission, "Attention: D. E. Scoll", signed by M. H. Gates, Secretary.

Examiner Basham: Received as Exhibit 135.

(The statement referred to was marked "Commission's Exhibit 135", and received in evidence.)

Mr. Kilkenny: Mr. Scoll, it is understood, is it, that all of these exhibits that you are offering concerning the Board of State Harbor Commissioners is subject to the same objection as to jurisdiction as heretofore made?

Mr. Scoll: Yes, sir. This proffer by you, as far as I am concerned, is not to be considered as an admission that the Maritime Commission has jurisdiction over the Board of Harbor Commissioners for the purpose of this case. We reserve that question for argument later.

Mr. Kilkenny: And it is understood, too, that this is the Commission's proffer?

Mr. Scoll: Yes.

Mr. Kilkenny: You are putting it in evidence and not the State Harbor Board?

Mr. Scoll: That is right. It is offered by me, as attorney for the Commission, and it was prepared by your staff.



Mr. Kilkenny: Yes.

[fol. 1444] Mr. Scoll: It is understood, however, that in connection with all of these proffers by the various terminals, including the public terminals, that they will have available persons who are familiar with the accounts and with these schedules to answer questions.

Examiner Basham: Received. Exhibit 135.

Mr. Scoll: May we go off the record for a moment.

Examiner Basham: Yes. Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

Mr. Scoll: Copies will be made available of Exhibit 135 and distributed to the Respondents as soon as we can get them.

In addition to Exhibit 135, the accounting schedules of the Board of Harbor Commissioners, there are some other exhibits in the way of diagrams and maps of the San Francisco terminals that will be available and be put into the record later.

The next offer is a statement showing schedule of receipts, revenues and expenses of Stockton Port District for the fiscal year July 1, 1939 to June 30, 1940.

Examiner Basham: It will be received as Exhibit 136.

(The statement referred to was marked "Commissioner's Exhibit 136", and received in evidence.)

[fol. 1445] Mr. Scoll: The next offer is a determination of wharf demurrage cost of the Port of Stockton, which has been prepared on the Edwards formula. It has been introduced into the record as Exhibit No. 63. There is only the original at this time and I will offer it with the request for leave to withdraw it and make copies for the Respondents.

Examiner Basham: You say it is already in the record as Exhibit 63?

Mr. Geary: The formula is in as Exhibit 63.

Mr. Scoll: The formula is in as Exhibit 63 and this is the application of the formula to the accounts and facilities of the Port of Stockton.

Examiner Basham: Received as Exhibit 137.

(The document referred to was marked "Commissioner's Exhibit 137", and received in evidence.)

Mr. Scoll: The next offer is a statement showing the tonnage handled over the ocean terminal wharves of the Port of Stockton for the fiscal year 1939-40 and the calendar year 1939-40.

Examiner Basham: Received. Exhibit 138.

(The statement referred to was marked "Commission's Exhibit 138", and received in evidence.)

Mr. Scoll: Mr. Townsend, does the Edwards formula study contain the number of tons of cargo that have been held on storage or wharf demurrage during the year?

[fol. 1446] Mr. Townsend: I am sure I don't know. Isn't that a question that you can take up when you get somebody on the stand, or do you want an answer now?

Mr. Scoll: If it doesn't, then I would like to have somebody prepared to testify with that information.

Mr. Townsend: I understand it does contain what you want. It is complete.

Mr. Scoll: That question is also directed at the other Respondents. I might say at this time that prior to the hearing a letter was sent to each of the six Respondents who are concerned with this cost issue requesting certain data in connection with commodities handled under wharf demurrage and wharf storage and amounts or volume of commodities. After some discussion with several of the Respondents I decided to withdraw that request because it would disclose in too great a detail the business of the Respondents, and substituting for that request I have asked each of them to be prepared to put into the record an oral or a written statement which will show, first, the tons of commodities handled over the terminal facilities for the period which the income and expense statement covers; and, secondly, the volume in tons of cargo on wharf storage or wharf demurrage during the same period.

Mr. Geary: Speaking on behalf of the Encinal Terminals, I can definitely say that that is reflected in Dr. Edwards' [fol. 1447] formula in an exhibit which we have handed to Mr. Scoll.

Mr. Graham: On the last page.

Mr. Townsend: As I understand, that is line 43, Schedule E of the formula.

Mr. Scoll: Thank you very much.

Mr. Townsend, is this the duplication of what is in the formula?

Mr. Townsend: As I understood it, you wanted a total statement of all tonnage handled over the ocean terminal wharves. That is what appears in Exhibit 138 which you are now distributing. Now, the statement that appears in the Edwards formula is the tonnage that is on wharf demurrage.

Mr. Scoll: Then I have yet to receive from each of the Respondents, except Stockton, a statement showing the total tons handled over the terminal wharves for the fiscal period covered by the income and expense statement.

Mr. Townsend: Mr. Scoll, before you proceed, my attention has been called to an error in Exhibit 138. The second line of figures, instead of reading "Calendar year 1940", should be "Calendar year 1939." May that be corrected?

Mr. Scoll: I want to qualify my statement about not receiving the information concerning the total tons handled [fol. 1448] over the terminal wharves by the other Respondents than Stockton. I have that information for San Francisco. So that leaves it yet to be received from Encinal, Howard, Oakland and Parr-Richmond.

Mr. Graham: Do you want that in exhibit form or can it be testified?

Mr. Scoll: It doesn't have to be in exhibit form. Whoever testifies to the schedules can furnish that information.

The next offer, Mr. Examiner, is a diagram entitled "Port of Stockton Comprehensive Terminal Plan."

Examiner Basham: Received. Exhibit 139.

(The diagram referred to was marked "Commission's Exhibit 139", and received in evidence.)

Mr. Scoll: The next offer, Mr. Examiner, is an accounting study by the Encinal Terminals showing the cost of wharf demurrage based on the Edwards formula. Like the study of Stockton it, too, is an original, which consists of the Edwards formula in blank filled in in ink. I will have to offer this and request the Examiner for leave to withdraw it and have copies made.

Examiner Basham: Received. Exhibit 140.

(The accounting study referred to was marked "Commission's Exhibit 140", and received in evidence.)

Mr. Scoll: The next item I am offering, Mr. Examiner, is [fol. 1449] a statement of the revenues and expenses for the year 1939 of the Encinal Terminals.

Examiner Basham: Received. Exhibit 141.

(The statement referred to was marked "Commission's Exhibit 141", and received in evidence.)

Mr. Scoll: The next offer is Encinal Terminals' balance sheet as of December 31, 1939.

Examiner Basham: Received. Exhibit 142.

(The balance sheet referred to was marked "Commission's Exhibit 142", and received in evidence.)

Mr. Scoll: The next offer, Mr. Examiner, is a statement showing the total tons handled on wharf demurrage from November 1, 1938 to and including October 31, 1939 by number of days. This was prepared by Encinal Terminals at my request to provide in the record a statement which will show a typical year of terminal operation to show the number of days in and the number of days each ton stays on storage.

Let me say, in offering this, that the Encinal Terminals in doing this did so at my specific request, and while I didn't ask any of the other terminals to do it I did not do so because it seemed, if I could get it for one terminal, it would be unnecessary to ask all the others to furnish it. The material is purely statistical and does not concern the business of Encinal Terminals.

[fol. 1450] Examiner Basham: Received. Exhibit 143.

(The statement referred to was marked "Commission's Exhibit 143", and received in evidence.)

Mr. Scoll: Mr. Examiner, that concludes the schedules that we now have ready for the record.

Mr. Graham: Mr. Scoll, may I ask a question on this 143? As I understand your offer, this is merely an offer to show the situation at Encinal and it does not purport to show an offer of what is typical of all terminals?

Mr. Scoll: No, that is true. It shows the situation at Encinal.

Mr. Graham: I haven't any idea what would be "typical" but I just wanted to know what your offer was.

Mr. Scoll: I discussed this with all the terminals, I think I did, and the only terminal which was prepared to or could make the study in a short time from its records was Encinal.

Mr. Examiner, that is all that is ready now. May we adjourn until two o'clock, Mr. Examiner?

Examiner Basham: We will now adjourn until 2:00 o'clock this afternoon.

(Whereupon, at 11:15 a. m., a recess was taken until 2:00 p. m.)

[fol. 1451]

Afternoon Session

2:10 p. m.

Examiner Basham: You may proceed.

Mr. Scoll: Mr. McCarl.

Mr. Read: Mr. Examiner, before we proceed further, for the purpose of the record I would like to state that my appearance in the original hearing was for Swayne & Hoyt. At this hearing I am not appearing for Swayne & Hoyt but for the Parr-Richmond Terminal Corporation.

MERRITT D. MCCARL resumed the stand and further testified as follows:

Direct examination.

By Mr. Scoll:

Q. Mr. McCarl, you have been previously sworn, have you not?

A. I have.

Q. I will show you Exhibit 119, which is a diagram of Outer Harbor Terminal Wharf Areas. Will you, with this pencil, mark on that diagram the space where shipside storage and demurrage is available?

A. Mark it with an "X"?

Q. Yes, mark with an "X" that space.

A. I would have to mark the whole thing because the storage is sometimes held in all of the transit shed space.

[fol. 1452] Q. Then it would be in Transit Shed Space No. 1, as indicated on Exhibit 119?

A. That's right.

Q. Would it be the whole of Transit Shed No. 2 as shown on Exhibit 119?

A. That's right.

Q. Are there any other spaces?

A. There are certain types of cargo that are held at times in the open wharf area.

Q. And that is an area, is it not, which is open to the sky? There is no shed over it?

A. That is correct.

Q. I show you a copy of Exhibit 120, the Grove Street Pier Inner Harbor Area. Will you indicate what areas of the Grove Street Pier as shown on Exhibit 120 are used and available for wharf storage or demurrage?

A. All of the space inside the sheds, both the east shed and the west shed, are available; likewise the space in front of the pier. The open space is available and used.

Q. When you say "in front" where would that front space be on the diagram?

A. It will be on the land side on the opposite end, that portion marked "outside face of quay wall."

Q. So that there is space which begins at the line marked "outside face of quay wall" going over to the left hand [fol. 1453] side of the diagram?

A. I will have to correct that. I have got this turned around in my mind here. The entire area of the pier inside the shed referred to on the exhibit as "East shed" and "West shed" is available and used for storage cargo; also the area in front of the pier designated on the exhibit "outside face of quay wall" is also available and utilized for storage cargo.

Q. That latter area, the area in front that you are speaking of, that is outside area?

A. Outside area.

Q. How far back from the outside face of the quay wall does that extend, approximately?

A. Oh, I would say about 150 feet.

Q. I will show you a copy of Exhibit 121. Will you indicate or describe what areas on that diagram are used for wharf storage and demurrage?

A. I might state that the shedded area of this particular facility is utilized 50 per cent by the McCormick Steamship Company for the handling of its transit cargo and also the retention of storage cargo, and all of the outside area is utilized for the transit storage handling of lumber.

Q. Will you, with this pencil, on Exhibit 121 mark off the area that is used by the McCormick Steamship Company?

A. (Marking off on diagram.)



[fol. 1454] Q. As you have marked it, it is the westerly half of Transit Shed No. 1 that is marked with an "X"?

A. That is correct.

Q. Will you take the pencil and indicate what the outside areas are that you are referring to?

A. (Marking off on diagram.)

Q. You have marked the westerly portion of the diagram of the 9th Avenue Pier which is described as "Concrete open Wharf", "Open Timber Wharf Extension" and "Concrete Bulkhead" and "Oil Macadam on Fill"? You have marked that with an "X". That is all outside area, is that correct?

A. That's correct, and used for lumber and lumber products.

Q. And when you speak of "outside areas" throughout in describing these diagrams you are describing areas which are open to the weather and which are not covered by any shed?

A. That's correct.

Q. Now, Terminal Building "C", which is described on Exhibit 122, is a building of how many stories?

A. Two.

Q. And it is separated from the Outer Harbor by a roadway, is it not?

A. Yes.

Q. And that roadway is shown on Exhibit 122 as "Marginal St." is that correct?

A. (No response.)

Q. I will withdraw the question. Terminal Building "C" is separated from the Outer Harbor by Wharf Street, is that correct, as shown on Exhibit 123? Wharf Street and Terminal Street?

A. Separated by Terminal Street.

Q. And Wharf Street?

A. And Wharf Street. That's correct.

Q. I believe you stated when you were on the stand before that Terminal Building "C" is used for wharf storage only occasionally, that ordinarily space is contracted for on lease or licensing arrangement. Is that correct?

A. That's correct. Where you say "lease", that is 30-day rental arrangement.

Q. Do you have any rental arrangements for any longer period of time?

A. No, we do not.

Q. You have the bean cleaner in Terminal Building "C", have you not?

A. That's correct.

Q. And what is his arrangement?

A. That is a 30-day rental arrangement.

Q. Which is renewable every 30 days?

A. It is according to the tariff. The rates are set forth [fol. 1456] in his tariff and he is assessed the charges set forth in the tariff for 30 days or a fraction.

Q. I show you a copy of Exhibit 126, the operating report of the Port of Oakland, fiscal year ending June 30, 1940. I withdraw that question. I think I will call Mr. Ricketts on Exhibit 126.

Mr. McCarl, does the City of Oakland have a civic development policy, one of the aims of which is to encourage the location of industries in Oakland?

A. It does, yes.

Q. And were the Port of Oakland facilities built to aid in carrying out that policy?

A. Well, I would say from my own opinion, yes, along with other items.

Q. And the Port Commissioners in determining the policies to govern the operation of the terminals take into consideration this development policy of the City?

A. Yes, particularly industries located in the proximity to the terminals so far as the Port Commission is concerned.

Q. A considerable volume of tonnage which moves across the facilities of the Port of Oakland inbound, we will say, is destined to points beyond the City of Oakland, is it not?

A. It is quite a substantial proportion, but I would say that the tonnage in the other direction, the greater percentage originates outside of the City boundary.

[fol. 1457] Q. That is, while a considerable portion of the inbound tonnage moves to points beyond Oakland in the interior an even larger portion of the outbound tonnage comes from points in the interior beyond Oakland, is that correct?

A. That's right.

Q. Does this general policy of the City of Oakland, which you have mentioned in connection with the policy of the Port, also enter into the question of the leasing of the facilities?

A. The leasing of facilities other than transit sheds?

Q. Yes.

A. Yes.

Q. Most of the goods that are stored on the Oakland Terminal facilities, either stored on demurrage or wharf storage, are either discharged by vessels at the terminal or eventually loaded on to vessels at the terminal, isn't that correct?

A. By far the largest percentage, yes. There may be a little tonnage that might not move by water, but we endeavor to limit that type of movement.

Q. And the goods which are loaded on to or discharged at Oakland Terminals are transported to or from points outside the State of California, are they not?

A. Yes.

Q. That is, the outbound?

[fol. 1458] A. The water movement—

Q. (Interrupting). The water movement?

A. (Continuing)—is beyond California, yes.

Q. Do you know what was the number of tons of goods which were handled at the Oakland Terminal facilities during your fiscal year 1939-1940?

A. I just obtained that information over the telephone, not knowing previously for sure that you wanted the information. The total of all of the facilities operated directly by the Port was 1,170,701 tons.

Mr. Read: Pardon me. For what period?

The Witness: Fiscal year ending June 30, 1940.

Mr. Graham: That is in and out?

The Witness: In and out; total tonnage. I can break that down by terminals, if you prefer to have it.

By Mr. Scoll:

Q. Would you do that, please?

A. We have segregated the tonnage handled at the 9th Avenue Terminal because of the special arrangement at that facility. The tonnage handled at 9th Avenue, exclusive of McCormick, is 246,074 tons; McCormick tonnage, 101,591 tons; and the balance of 821,036 tons was handled at the Outer Harbor Terminal, Grove and Market, and Livingston and Dennison.

Q. Have you broken it down as between Outer Harbor and [fol. 1459] Grove Street?

A. We haven't, but we can break it down in any way that you might want. I haven't the figures here at this time.

Q. Will you furnish for the record the break-down of the total tonnage which you have given, 1,170,701, showing the amounts handled over Outer Harbor and Grove Street? What was that last one you mentioned?

A. Livingston and Dennison, where lumber is handled only; Livingston and Dennison Piers.

Q. Will you give us that too?

A. Yes.

Q. Will you also give us a statement showing for each of the terminals we have been considering, namely, 9th Avenue, Grove Street, Outer Harbor, and Livingston and Dennison, the number of tons stored during the fiscal year 1939-1940 showing what proportion, if any, was high-piled?

A. That would probably require some time.

Q. You can furnish that after the hearing.

A. That would probably require some time to compile. Yes.

Mr. Jones: Mr. Scoll, if I may interpolate at this point, I understand that it will take a matter of going through the individual billing records at each of the terminals and it will require at least a month's time to get that information. It has not been compiled in any form at this time. If you want us to do it, we can prepare it and submit it later [fol. 1460] on after the hearing. But we couldn't do it otherwise.

Mr. Scoll: It will be all right if it comes after the hearing.

By Mr. Scoll:

Q. Mr. McCarl, I understand from your previous testimony that a portion of the expenses of the Port of Oakland are met by taxes. Is that portion the amortization and interest on bonds?

A. That's correct. That is arranged for through the City Council, yes.

Q. Do you happen to know what kind of a tax is assessed for this purpose? Is it a special property tax levied by the Port or is it merely a portion of the taxes assessed by the City of Oakland on all properties?

A. It is my understanding it is a special assessment to take care of the Port charges.

Mr. Jones: I could correct that, Mr. Scoll. It is just part of the general tax levy.

The Witness: What I meant to say is, that a definite amount was figured for the Port but it came out of the general tax levy.

Mr. Scoll: I have a couple of questions on this matter of taxes, Mr. Jones. How would you prefer that I do it? Shall I put them to the witness?

[fol. 1461] Mr. Jones: I don't know what they are. If Mr. McCarl can answer them he will be very glad to do so.

By Mr. Scoll:

Q. Just one or two more questions. How is the amount of the tax determined?

Mr. Jones: Do you want me to answer that?

A. The interest on the bonds is a definite amount.

Mr. Scoll: Maybe Mr. Jones can help us out on that.

Mr. Jones: I might state this: That each year, of course, there is a definite number of bonds that are maturing. So, first, the Council has to set aside sufficient funds to take care of that. Then, of course, is the interest on the outstanding bonds, and the sum of those two figures is the amount which goes in to the general tax levy.

Mr. Scoll: And that is a part of the annual budget of the City of Oakland?

Mr. Jones: That is correct.

Mr. Scoll: Are the accounts of the Port of Oakland consolidated with the City of Oakland for budgetary purposes?

Mr. Jones: I am not quite sure that I understand your question. We make up a separate budget and all the expenditures of the Port Department are under the Board of Port Commissioners without any check by the City Council.

[fol. 1462] Mr. Scoll: Well, the City of Oakland keeps its own budget, does it, not?

Mr. Jones: That's right.

Mr. Scoll: And it includes in its budget the amortization and interest payments for the Port of Oakland?

Mr. Jones: For the bonds only.

Mr. Scoll: For the bonds?

Mr. Jones: Yes.

Mr. Scoll: Does it include anything in its budget for operating expenses of the Port of Oakland?

Mr. Jones: It does not.

Mr. Scoll: I have no further questions of Mr. McCarl.

Mr. Geary: May I ask this question of you, Mr. Jones, in relation to what you were just answering Mr. Scoll? If the operations of the Harbor Department were conducted at a loss would the City of Oakland make up that loss?

Mr. Jones: Yes. The charter so provides.

Mr. Geary: In addition to the redemption of the bonds and the interest on the bonds?

Mr. Jones: Yes.

Examiner Basham: Any further questions?

Cross-examination.

By Mr. Read:

[fol. 1463] Q. I would like to ask one or two, if I may. As the Traffic Manager of the Port of Oakland, is it the policy of the Commission to consider revenues from demurrage in the sense of added revenue?

Mr. Geary: What do you mean by the phrase "added revenue", Mr. Read?

Mr. Read: Above the revenue that is generally derived from pier operations.

A. Well, I would say that the storage is considered more or less incidental to the main purposes of the operation of the facilities, which are to take care of transit cargo, deriving the principal revenues of service charges, dockage and tolls therefrom. Whatever revenue we can derive from storage we would consider that as added revenue, if that is what you mean?

By Mr. Read:

Q. Your storage based both upon tonnage and revenue is small in relation to the total operation in tons or in revenue, is it?

A. Yes. It would be a small proportion of the total revenues.

Q. So that you have earned certain revenues for other services rendered, and if the cargo remains on the dock it is just a little extra revenue for the Port?

A. That's right.



[fol. 1464] Q. It would not be derived if the cargo were removed within the free time?

A. As a rule we don't need all of our space for transit cargo because we have to have enough space available to take care of full cargoes that might be discharged from the vessels, and we like to derive some revenue from storage for the space during the interim between vessels.

Q. In your capacity as Traffic Manager I suppose that you handle all negotiations with shippers about the rates for any of the services that the Port renders?

A. Yes, that's correct.

Q. And from your experience in that capacity would you be fearful that anything but a very moderate increase, generally speaking, in the storage rates might drive that business away from the terminal entirely?

Mr. Geary: I am going to object to that, Mr. Examiner, upon the ground that obviously it is conjectural.

Mr. Read: That is all it is, and from his experience I am asking for an opinion.

Mr. Graham: I think it is subject to the further objection that there is no definition as to what the term "moderate" means. His idea of "moderate" may be entirely different than the person who is asking the question.

Examiner Basham: The objection is overruled.

Mr. Scoll: That also has been pretty thoroughly covered [fol. 1465] in the record, Mr. Examiner. We had Mr. McCarl on for three days and we explored his views on this question backwards and forwards, and if we open the matter up again we will probably be doing the same thing for three or four days.

Examiner Basham: Just a moment! The objection has been overruled. Suppose you answer the question? and we will drop the matter.

A. Yes. From the information that I have received I think that any considerable increase in the storage rates and the change of the storage basis would very materially affect the amount of goods that were to remain in storage.

By Mr. Read:

Q. And if that were lost do you suppose that it would probably also deprive you of other revenues that are derived by reason of the storage?

A. Yes, I do.

Q. And if they were lost would you be able to recover that loss from any of the other services that you render?

A. No. If we lost the tonnage we would lose all the revenues.

Q. For that reason, Mr. McCarl, is it or is it not your opinion that storage charges instead of being built up on this theory expressed by Dr. Edwards should be instead treated as added traffic?

[fol. 1466] Mr. Scoll: Mr. Examiner, Mr. McCarl has already stated that on the record twice, and if Mr. Read would like to I will refer him to the page where Mr. McCarl's answer to that same question already appears. I don't think we are getting anywhere to cover this thing over again.

Mr. Read: I won't have but one or two more questions, Mr. Examiner.

Examiner Basham: Objection overruled.

The Witness: Would you repeat that question, please?

(The question referred to was read by the reporter.)

A. Answering the question as I understand it to be intended—

Mr. Geary: (Interrupting) How do you understand it to be intended?

The Witness: It says "Added traffic".

Mr. Geary: What do you understand by the phrase "Added traffic"?

By Mr. Read:

Q. Let me ask you, Mr. McCarl, Have you ever heard the railroads express the theory of added traffic in making freight rates?

Mr. Scoll: Mr. Examiner, we have gone into this, and in one second here I will show you the page of the transcript where he can find that pretty fully discussed already. I see no purpose served in going back over those questions [fol. 1467] again. We will get the same answers.

Mr. Read: Will you please let the witness answer this one question?

A. I think I can answer that very shortly. I don't agree with Dr. Edwards in his allocation of the overhead charges,

and I think that the storage expense, the principal charges having to receive the cargo and to deliver the cargo—the principal expenses are against the other items of revenue in that the storage expense in the case of the Port of Oakland at least is just for the space occupied primarily.

By Mr. Read:

Q. And for that reason you don't want to assign these miscellaneous allocations that Dr. Edwards has set up?

A. Yes. I think the principal part of the expenses should go against the items involving the transit movement, which is service charges, dockage and tolls.

Mr. Read: That is all.

Examiner Basham: Any further questions?

Mr. Townsend: I have just one or two questions.

By Mr. Townsend:

Q. In certain figures of total cargo over the docks that you gave did you include any pipeline cargo, or do you have any of that?

A. That includes all cargo including pipeline cargo.

Q. And what pipeline facilities or connections do you have [fol. 1468] at the Port of Oakland?

A. There are some pipe lines at the Outer Harbor Terminal through which fuel oil and gasoline pass in considerable quantities.

Q. That is solely at the Outer Harbor?

A. That's correct, yes. There is a little bit at Dennison Street.

Q. Are those pipelines owned by the Port of Oakland?

A. No, they are not; by private interests.

Q. Is there any way that you can give us the portion of the total figure that you previously gave that would be covered by this pipeline cargo?

A. I could have that information for you in the morning. I don't have the figures with me right now.

Mr. Townsend: I think it should be in the record if those facilities are not owned by the Port of Oakland.

Mr. Scoll: So do I, Mr. Townsend. I didn't know that that figure included pipeline cargo, and I would like to have Mr. McCarl segregate that.

The Witness: I will have that available tomorrow.

By Mr. Townsend:

Q. Will you please state who owns the rail track facilities at the Grove Street dock?

A. The Port of Oakland; the City.

Q. How much trackage does that include starting, we will [fol. 1469] say, from the waterfront?

A. I believe possibly the exhibit shows. I don't have the figures in my head.

Q. Well, just generally, how far back does it go from the waterfront?

A. At Grove Street the trackage around the pier on both sides and on the face of the pier would—(pause)

Q. Does it go back across the street and include the area where you sometimes store pipe?

A. Yes. It might be referred to as the Embarcadero.

Q. Does the ownership of the tracks by the Port of Oakland, if you know, commence approximately where the spur track joins the main line tracks and continue on down to the property line of the Howard Terminal?

A. I think that would be a proper description.

Q. What is the situation with respect to the ownership of the rail track facilities at the other docks?

A. The trackage serving the terminal facilities are owned by the Port of Oakland.

Q. Is that true of the 9th Street Dock?

A. Yes.

Q. And at the Outer Harbor?

A. That's correct.

Q. At what time of the year does the greatest amount of wharf storage occur at the Port of Oakland?

[fol. 1470] A. Oh, I believe we would probably say at the end of the year.

Mr. Scoll: You are speaking of calendar year now?

The Witness: Calendar year, yes.

By Mr. Townsend:

Q. Over how long a period does the principal storage occur?

A. Well, of course the heavy movement commences—pineapple in July and other commodities, say, in August; and storage continues rather heavily until tax period, about the first of March.

Q. Well, would you say that the storage continues heavy throughout the period commencing in August and extending to early in March?

A. I would say that that is the heaviest period. Different commodities, of course, are stored at different times of the year.

Q. Have you found in the operation of the different facilities of the Port of Oakland that the storage of cargo on the docks interferes in any way with the handling of transit cargo?

A. I would say, No, in so far as the facilities operated by the Port of Oakland are concerned.

Q. And that is true even during this busy season?

A. That's correct.

[fol. 1741] Q. If you had one of your facilities, say, the 9th Avenue dock, filled completely with wharf storage cargo you would not be able to use that dock for any other purpose, would you?

A. No, certainly not.

Q. And under those circumstances the entire facilities, including the apron and the transit shed and the wharf part, would really have to be charged against the stored cargo, is that correct?

A. If the conditions were as you say, but we wouldn't permit the storage of such large volume of cargo. Our tariff gives us the right—it says that the storage of goods is optional with the management.

Q. What is your general practice with respect to wharf storage in so far as the use of the different facilities is concerned? Do you try to have most of your wharf storage occur on one facility, or just what do you try to do?

A. Wherever we feel that it can be accommodated without unnecessarily interfering with the movement of transit cargo. We like to retain all the storage cargo we can, but we have had occasions when it was asked that it be removed to make room for transit cargo.

Q. What I meant to develop was whether you try to concentrate your wharf storage cargo in any one particular facility, or do you just take it as it comes and put it in one [fol. 1472] facility or another as the case may be?

A. We just take it in any facility on inbound water movement wherever the stevedores discharge it. Sometimes we try to control the locations that it is to be discharged into

where we can accommodate storage to better advantage than some other facility, but it is very seldom we have to move any storage cargo. You might say, very rarely do we have to handle it after it is once deposited by the stevedores in the case of incoming cargo or by car unloaders or by truck carriers in the case of outbound movement.

Q. By that do you mean that you have generally idle space on all your facilities that can accommodate the wharf storage cargo?

A. That is correct.

Q. You say it is very seldom that you have to move wharf storage cargo from one storage to another. Do you ever have to move any?

A. We do sometimes, yes.

Q. And under those conditions would you have a case, possibly, where you might have to move some cargo that is stored on the Grove Street dock to Outer Harbor?

A. No; just from one unit of a terminal to another unit. For instance, moving it from the transit shed of Outer Harbor Terminal to Terminal Building "C".

Q. And under those circumstances is the cost of that [fol. 1473] movement absorbed by the Port of Oakland or is it an additional charge made against the owner of the cargo?

A. It is absorbed by the Port of Oakland except when space is rented in Terminal Building "C", and then the transfer is for the account of the owner of the cargo.

Q. In other words, what you are doing there is placing the cargo from one facility to another for your own operating convenience?

A. That's right. If we know it is going to stay a very long time, then we might move it.

Q. And I assume that the reason that you have to move it is because you need the space on your regular wharf for the handling of transit cargo?

A. That's right. That's very rarely, however, as I stated.

Mr. Townsend: That is all I have.

Redirect examination.

By Mr. Scoll:

Q. Mr. McCarl, you mentioned moving cargo from one transit shed to another in the same terminal facility. Doesn't it often happen that you have to move cargo from Transit



Shed No. 1 of Outer Harbor or to Transit Shed No. 2, or vice versa, in order to load outbound cargo?

A. Sometimes, in the case of pineapple where it comes in by ocean-going vessels and delivered to ocean-going vessels that transfer is sometimes required, where we get double [fol. 1474] revenues, one from the incoming vessel and one from the outgoing vessel, to take care of that. The stevedores, however, will truck quite long distances without complaint.

Q. The stevedores do not truck from one end of Transit Shed No. 2 in Outer Harbor to Transit Shed No. 1, do they?

A. They do sometimes, yes.

Q. That is a distance of almost 2000 feet?

A. That's right.

Q. Do they truck that distance very often?

A. We usually try to berth the vessel where they won't have much trucking. We have quite a lot of berthing space.

Q. Don't you have to pay for that transfer?

A. Not very often, no.

Q. Is it done by your employees?

A. As I say, we are usually able to berth the vessels so as to eliminate that long transfer. Sometimes the stevedores will do it. We have had occasions where we have moved some.

Mr. Scoll: That is all.

Recross examination.

By Mr. Geary:

Q. Mr. McCarl, to what extent does the Port of Oakland engage in the operation of high-piling?

A. Very limited extent.

Q. At any time?

A. I don't recall—I don't believe I can recall a single [fol. 1475] instance at Grove Street Terminal, Market Street Terminal, where we have high-piled. In the case of pineapple at the Outer Harbor Terminals we high-pile.

Q. On the terminal or in Terminal Building "C"?

A. In both.

Q. Was the owner or the consignee of this pineapple the same organization or were they different organizations where it was part on Outer Harbor and part in Terminal Building "C"?

A. The same owners would be involved in both facilities.

Q. Would it be because of the fact that Terminal Building "C" was filled that it was necessary to leave it on Outer Harbor Terminal?

A. Not necessarily, no. It might be cheaper to high-pile if we have sufficient space in the transit shed rather than transfer to Terminal Building "C".

Q. You say it might be cheaper to high-pile?

A. Yes.

Q. And yet, notwithstanding that fact, you do make the transfer from the Outer Harbor to Terminal Building "C"?

A. Usually when it is—the only time that transfer is effected is when it is requested by the consignee, and then the goods are going to remain in storage for a long period.

Q. And that is based upon the fact that what he has done is to lease Terminal Building "C" or a part of Terminal [fol. 1476] Building "C" to take care of his particular cargo?

A. At times.

Q. What happens at other times?

A. At other times it is on the daily rate and the transfer is for our own account.

Q. And by that you mean that you will transfer the cargo from the Outer Harbor Terminal to Terminal Building "C" at your expense and merely charge the owner of that cargo a cent and a quarter a ton per day?

A. That's correct; long time storage.

Q. And when you move that cargo into Terminal Building "C" under those circumstances do you engage in high-piling..

A. Yes.

Q. You do under those circumstances?

A. Yes.

Q. Normally, what is the extent to which you engage in high-piling? Twice or three times the normal height?

A. If we high-pile, between two and three.

Mr. Scoll: You mean sometimes two tiers and sometimes three tiers?

The Witness: Yes.

By Mr. Geary:

Q. The normal height being seven cases?

A. For different—

Q. (Interrupting) I mean for pineapple.  
[fol. 1477] A. Normally seven.

Q. You recognize, do you not, that a part of your terminal operation consists not only in moving cargo in and out of the facility to and from vessels, but it likewise carries with it an obligation to be performed on behalf of the consignees of that cargo or the shippers of that cargo in utilizing your facility to hold the cargo for a period, do you not?

Mr. Scoll: Will you repeat the question?

(The question referred to was read by the reporter.)

Mr. Jones: What answer do you want, Mr. Geary?

Mr. Geary: There is only one: "Yes" or "No."

A. I believe I understand your question. I would say that the service that we perform for the steamship companies includes receiving the cargo that is going out by water movement, receiving the cargo from trucks and cars and delivering it to the vessels; and on the other direction movement, receiving it from the vessels and delivering it to shippers and consignees. The expense of performing those services is included in the transit movement, I would say.

By Mr. Geary:

Q. Suppose the shipper or the consignee would say, "I want you to hold the cargo for a while," would you refuse to take the cargo?

A. Not if we have room.

[fol. 1478] Q. Have you ever had a situation where you haven't had room on your dock in the face of a situation of that character?

A. Unfortunately for the Port of Oakland, no.

Q. In other words, you have always had room on your dock for that?

A. I don't recall having turned any cargo away yet.

Q. So you have never refused to give to a shipper or consignee that service?

A. Not that I can recall, no.

Q. And if you perform that service for that shipper do you think that you ought to be paid for it or do you think that you ought to do it for nothing?

A. Well, under our policy I think that the shipper should pay something for the utilization of the space beyond the free time period.

Q. You think he ought to pay what it cost you at least?

A. I think that would depend on whether we might be in the pioneering stage, whether our facilities are utilized to a reasonable capacity. Circumstances and conditions would have to be taken into consideration.

Mr. Scoll: Again, Mr. Examiner, I don't want to make a nuisance of myself, but Mr. McCarl has expressed himself on that point several times already.

Examiner Basham: Sustained. I think we have gone [for. 1479] into that, Mr. Geary, very thoroughly.

Mr. Geary: I will submit, Mr. Examiner, to your ruling. But I don't think that I had an answer to the last question that I addressed to the witness, Mr. Examiner. Frankly, I don't.

Would you mind reading the question, Mr. Reporter?

Examiner Basham: I understand that there was an objection to it and I sustained it.

Mr. Geary: No, not to the last question.

(The question referred to was read by the reporter.)

Mr. Geary: I think that calls for a categorical answer: "Yes" or "No."

The Witness: Yell, I couldn't very well say "Yes" without qualifying it.

By Mr. Geary:

Q. And your qualification would be based upon the answer that you just gave, as to whether or not you were in the pioneering stage?

A. A number of circumstances would have to be taken into consideration, because very naturally if you are handling only a small amount of tonnage you would have to take that into consideration in determining the cost of handling it.

Q. Mr. McCarl, if a shipper were to offer you 5,000 tons of cargo and say to you "I anticipate that you are going to be required to store 50 tons of that cargo for two years," [fol. 1480] would you refuse to accept that shipment?

A. Not if we had room for it.

Mr. Jones: Mr. Examiner, objection. I object to that question and any other question along this particular line upon the ground that it is improper cross examination. It goes away beyond anything that was brought out in chief by Mr. Scoll, which was limited practically to a description of the physical facilities of the Port of Oakland. Now we are getting into an operating territory which was not taken up by Mr. Scoll and, consequently, is beyond the scope of cross examination.

Mr. Geary: There were certain questions, Mr. Examiner, if I may be heard on that, that were addressed to this witness by some of the other terminal operators, and I think that my interrogation of them has a direct bearing upon the issues that were brought out.

Mr. Scoll: I would like to add to what I have said before: That the point which Mr. Geary wants brought out is already in the record at pages 880 to 897.

Mr. Geary: That is all.

Examiner Basham: I sustain the objection.

Mr. Geary: That is all.

By Mr. Graham:

Q. Mr. McCarl, in this total of \$1,170,701 tons, does that include any tonnage that moves, let us say, inter-port between [fol. 1481] tween your respective facilities within your jurisdiction?

A. No. We don't transfer any cargo between our own facilities.

Q. So that this total tonnage which you have given us is tonnage which moves into your facility or out of the facility?

A. That's correct.

Q. But doesn't include anything within the facility if you do transport it?

A. That's correct.

Q. May I just ask one question in connection with this Terminal Building "C"? I think you may have answered this on your previous examination at the prior hearing. I do not know. It is a fact, is it not, that you have cargo in that Terminal Building "C" both on the daily demurrage rate, we will call it, and on the monthly storage rate both at the same time?

A. We have had in the past.

Mr. Graham: That is all.

Examiner Basham: Excused.

(Witness excused.)

Mr. Scoll: Mr. Ricketts.

R. NEIL RICKETTS was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

[fol. 1482] Direct examination.

By Mr. Scoll:

Q. Will you give the reporter your full name and occupation, Mr. Ricketts?

A. R. Neil Ricketts; Chief Port Accountant.

Q. You are accountant for the Port of Oakland, are you not?

A. Yes.

Q. And you are familiar with the method of keeping the accounts and the general information that is set forth in them?

A. Yes, sir.

Q. Did you prepare or have prepared under your direction at the request of the Maritime Commission an analysis of income and expense for the Port of Oakland for the fiscal year 1939-40, which is embodied in Exhibit 126?

A. Well, that's my annual report to the Board itself.

Q. So that this report was not prepared especially for this hearing?

A. No, it was not.

Q. Did you, at the request of Mr. Carlon, prepare a number of supporting schedules to show the detail on certain accounts that are set forth on Exhibit 126? I show you Exhibit 126-A, "Port of Oakland Expense, Fiscal Year 1939-1940." Have you a copy of that in front of you?

A. I have a copy of that. That just covers the operation [fol. 1483] of the terminals as indicated there. It does not take in the entire Port.

Q. Will you explain just how the break-downs in Exhibit 126-A apply to the schedules in 126? Have you a copy of 126 before you?



A. No, I haven't.

Q. There is your annual report (indicating).

The Witness: Will you repeat that question again? I don't know that I have it.

Mr. Scoll: The reporter will read it.

(The question referred to was read by the reporter.)

By Mr. Scoll:

Q. In other words, what do the break-downs in Exhibit 126-A apply to?

A. Oh, I see what you mean. In this condensed report that you have here—

Q. (Interrupting) That is Exhibit 126?

A. That's 126. On Schedule No. 3 the expenses there are shown only under the general headings, "Personal Service", "Supplies & Materials", etc.; whereas on this other exhibit the detail of those general headings is indicated.

Q. So that Exhibit 126-A is a detailed break-down of the first item in the account under "Direct Expenses" on Schedule 3, namely, "Personal Services;" is that correct?

A. That's right.

[fol. 1484] Q. And the second heading on Exhibit 126-A is "Supplies & Materials", and that is a break-down of "Supplies & Materials" on Schedule No. 3; is that correct?

A. That is correct.

Q. And so on through the list on Schedule No. 3?

A. For direct expenses only.

Q. That is including all the items under "Direct Expense" from "Personal Service" down through "Maintenance"?

A. That's right.

Q. For the three terminals listed: Outer Harbor, Grove Street, 9th Avenue; is that right?

A. That's right.

Q. Will you take the exhibit which has been introduced as 126-B entitled "Construction Cost of Structures"? What is that a break-down of in Exhibit 126?

A. That doesn't appear in 126.

Q. That is a supplemental exhibit, is it?

A. Yes. That was made up at the specific request of Mr. Carlon.

Q. Will you explain for the record just what is shown on 126-B in relation to your annual report, Exhibit 126?

A. The last page of that annual report. It has no schedule number.

Q. And on that last page appears an account entitled "Fixed Assets", is that correct?

[fol. 1485] A. That's right.

Q. Which includes buildings, structures, land and so forth?

A. Yes, sir.

Q. And what you have done in Exhibit 126-B is to furnish the detail of that item in your annual report, is that correct?

A. On certain of the facilities only, not all of them.

Q. That is right. Outer Harbor, Terminal Building "C", 7th Street, 9th Avenue and Grove Street?

A. That's right. And Terminal Building "C".

Q. Are the third and fourth pages of Exhibit 126-B the maintenance expense which is applicable to those structures detailed on pages 1 and 2, is that correct? Namely, maintenance expenses for the fiscal year 1939-40?

A. That's right.

Q. Will you state whether or not the land costs are included in the statements on Exhibit 126-B, your construction cost? Land cost or land value.

A. On the last page all land values are included.

Q. Will you furnish for the record, Mr. Ricketts, a statement or schedule showing the land values per square foot as of June 30, 1940 assignable to the shed areas, the transit shed areas of each of the facilities of the Port of Oakland to which the data in Exhibit 126-B applies? That can be [fol. 1486] furnished after the hearing is closed. Will you furnish it?

A. I presume we can. That would be a matter for the Engineering Department to determine that.

Q. You keep records, do you not, as to the land values?

A. Yes, the total.

Mr. Townsend: Mr. Scoll, just a question to clear up your request there. You refer to the land values with respect to land occupied by the transit shed, do you? That also includes the portions adjacent to the transit shed which are occupied by tracks and apron and so on, everything that is connected with the transit shed; or just the specific shed area?

Mr. Scoll: In making up these cost studies you and the other terminals have used the land values applicable to the

transit sheds because those were the spaces in which wharf storage and wharf demurrage is incurred. Now, I want to follow the same procedure here, and I think if we have the land values for just those areas that are covered by transit sheds in which there is wharf storage and wharf demurrage, we will have all that we need.

Mr. Townsend: The reason I raise that question, we did go beyond this transit shed area with respect to land values and it wouldn't be comparable with our figures. But it is up to you to get whatever you want.

[fol. 1487] Mr. Scoll: I don't want to confuse this issue right here now with a consideration of other land values. I am trying to apply the same data here that were used in the Edwards formula. So I think for the purpose of applying the Edwards formula, so far as it can be applied to the Oakland operation, if we have the land values applicable to the transit shed areas we will have all we need.

Mr. Townsend: That is all right. I just wanted to clear up a point to make sure you knew what you were getting.

Mr. Jones: Do you want the appraised value or do you want the cost to us?

Mr. Scoll: We will take whatever you carry on your books.

Mr. Jones: The point being that these lands were for the most part given to the City by the State of California, and the only cost has been the cost of the fill-in.

Mr. Scoll: How do you carry it on your books?

Mr. Jones: I am not sure.

Mr. Scoll: Well, that will be the proper figure to use, I believe.

Mr. Graham: May I suggest, Mr. Scoll, that Shed C be included in that also in view of Mr. McCarl's testimony?

Mr. Scoll: Yes, I meant to suggest that.

Mr. Graham: And that we be furnished with a statement [fol. 1488] ment at the same time of what the total square footage is. I don't know whether that is in the record or not.

Mr. Scoll: That square footage is in the record.

Mr. Geary: It is in the record already.

Mr. Graham: Thank you.

By Mr. Scoll:

Q. Just how is the value of these lands stated on your books? Is it as appraised value or as cost?

A. Part of it is cost and part of it is appraised value, but the Engineering Department set up those figures for me a few months ago in order to bring the set-up in line with the City Hall figures.

Q. You recently have had some appraisals made, have you not, for some of those areas?

A. A few months past.

Q. Well, you don't know, then, whether the appraisals applied to the lands other than transit sheds or not?

A. No, I wouldn't want to say right at this moment.

Q. Suppose you in your schedule, or however you prepare the information that is supplied for the record, indicate the land values that were assigned to the shed areas and explain how they were arrived? Mr. Ricketts, will you turn to the last page of Exhibit 126, the Harbor Maintenance & Improvement Fund Balance Sheet? The item \$5,148,372.82 appears in the total of the first column under [fol. 1489] "Assets." Do you find that?

A. Yes.

Q. That represents, does it, the amount or the value of the assets acquired through the Harbor Maintenance & Improvement Fund, as stated?

A. Yes, that's right.

Q. The Port of Oakland has assets in addition to this amount, does it not, which would represent the assets acquired through the application of the funds raised from the bond issue?

A. Yes.

Q. And which would bring the total to how much?

A. You are speaking now of the entire Port area?

Q. That's right. The value of all the assets.

A. \$14,000,000 in round figures.

Q. In accounting for depreciation, Mr. Ricketts, what method do you use? Do you use the straight line or the sinking fund method?

A. I am sorry to say that that figure is not made up in my office. It is made by the Engineering Department.

Q. So you don't know what method they use?

A. I do not know what method they use.

Q. Do you know what percentages are used on the shed facilities?

A. No, because they vary depending on the construction. [fol. 1490] Q. Will you furnish for the record, Mr. Rick-

etts, the percentages used in computing depreciation in Exhibit 126 applicable to the areas we have been discussing; that is, Outer Harbor, Grove Street, 9th Avenue, Terminal Building "C"? That is, the improvements that are set forth on Exhibits 119, 120, 121 and 122? Will you furnish that for the record?

A. Yes.

Q. And in the statement that you furnish will you also state the method that is used in determining the depreciation rates?

A. Yes.

Q. It won't be necessary for you to furnish it right now. If it is inconvenient for you, you can furnish it after the close of the hearing.

A. Yes.

Q. And in preparing that statement will you relate the depreciation figures which you show to the items that are contained in Exhibit 126-B? Do you happen to know what interest rate applies to the bonds that are issued in connection with the acquisition of the Port facilities?

A. Those are various also.

Q. They vary?

A. They vary also.

Q. Do you know what the rates are?

[fol. 1491] A. They run as low as  $2\frac{1}{2}$ , I believe up to —

Q. (Interrupting) Speak a little louder.

A. They run as low as  $2\frac{1}{2}$ , I believe, and up to 5 or somewhere around there. You see, those bonds are not handled in the Port offices at all and I don't attempt to keep up with the rates of interest involved in the bonds.

Q. Well, then will you secure for the record a statement showing the amounts of bonds that have been issued at various times together with the percent of interest which is paid on them?

A. Yes, I can.

Q. Will you do that? That should be very simple. It is just a statement of the bond issues and the interest rates.

Mr. Jones: You want merely those issues which went into these particular facilities?

Mr. Scoll: Yes, that is right; which went into the facilities which we are discussing.

By Mr. Scoll:

Q. Does the Port of Oakland make or has the Port of Oakland made any studies to develop the cost of furnishing wharf storage using the formula of Dr. Edwards?

A. No, sir.

[fol. 1492] Q. Have you made any studies to develop those costs using any other basis?

A. No, sir.

Q. Are the accounting records of the Port of Oakland kept in such a manner that the cost of furnishing wharf storage, including both direct and overhead assignable to wharf storage, can be allocated without any further study?

A. No, they are not.

Q. Have you made any studies to determine the number of square feet occupied per ton of commodities that are stored on the terminal facilities in the transit sheds?

The Witness: State that again.

(The question referred to was read by the reporter.)

Mr. Scoll: I mean density studies.

A. Not to my knowledge.

By Mr. Scoll:

Q. Mr. Ricketts, have you made any studies to determine the average amount of floor space area in the transit sheds occupied by storage cargo during the course of a year?

A. I have not, no.

Q. Could you make such a study? Have you any data from which you could—What was your answer to my question when I said “Could you make such a study”?

A. I don't have an answer.

Q. You don't have an answer. Let me ask you another [fol. 1493] question: Are your records kept in such a way that you can determine the average amount of space occupied by storage cargo in each of the facilities that we have been considering?

A. There might possibly be records on the terminals that would give somewhat of an idea of that.

Q. Well, could you prepare for us some such estimate, if you haven't the accurate figures, and let us have that for the record some time after the close of the hearing?

A. Yes, I presume we could.



Q. My request, to repeat in order to make sure it is clear on the record, is the average amount of space in each of the transit sheds occupied by stored cargo during the course of the year, basing that on the fiscal year which is used in Exhibit 126.

Mr. Jones: That is going to entail a great amount of work, Mr. Scoll.

Mr. Scoll: Well, we can come—

Mr. Jones: (Interrupting) An estimate is not going to be of any value.

Mr. Scoll: If you can arrive at some figure and you could give us that amount of space. We have it for all the other terminals in one form or another and we would like to have it for the Port of Oakland too.

By Mr. Scoll:

[fol. 1494] Q. Do you happen to know what the tax rate is per hundred dollars on land adjacent to the waterfront in your neighborhood?

A. No, I do not.

Q. Do you happen to know what the rate is on nearly industrial land?

A. I don't know that, either.

Q. Or on improvements?

A. No, sir.

Mr. Scoll: Thank you, Mr. Ricketts.

Cross-examination.

By Mr. Geary:

Q. There are no taxes included in your Exhibit 126 as an item of expense?

A. For the reason as before stated, because of the bonds.

Q. In other words, there is no tax assessed against any of the improvements or any of the lands which the Oakland Harbor Commission owns?

A. No, sir.

Q. Neither City nor County taxes?

A. No, sir.

Q. You do not likewise include in your item of expense an item such as the Social Security payments?

A. No.

[fol. 1495] Q. You are not subject to that?

A. Not subject to that.

Q. Will you refer for a moment, Mr. Ricketts, to Exhibit 126-B? You refer there to what is known as the 7th Street Unit. What is that unit with relation to the units that are referred to in Exhibit 126?

A. We do have a reference to it in this other exhibit.

Q. You do have a reference to 7th Street Unit in Exhibit 126?

A. Here it is (indicating).

Q. Are the figures in Schedule No. 2 of Exhibit 126 incorporated into Schedule No. 1 of that exhibit?

A. Yes.

Q. Where is the 7th Street?

A. Outer Harbor.

Q. I see. Taking 126-B, you have a total construction cost there of buildings totaling some five million, three hundred thousand-odd dollars, and in the last page of Exhibit 126 you have a figure there for building structures and improvements of some two million, seven hundred thousand-odd dollars. What is the explanation of the difference between those two in so far as they relate to the terminal properties?

A. The first exhibit you mentioned covers the entire investments, both bond and revenue fund. The second exhibit is investment from revenue funds only.

[fol. 1496] Q. I wonder if you would mind elaborating on that because, frankly, I will admit that I am a bit dense on it and I don't know just exactly what the purpose is.

A. The bond issues when authorized are spent for improvements only, improvements and betterments. Our income account, which is the revenue fund, can be spent for any purpose.

Q. In other words, you mean out of the bonds you have spent five million, three hundred thousand-odd dollars; and out of the revenues you spent another two million, seven hundred thousand-odd dollars?

A. No. You can't say that we spent two million.

Q. You may have spent more than that?

A. Because this figure set up in here is the final value that has been fixed in that recent survey when we came to agreement in Harry Williams' office and raised certain values that had heretofore not been set up on our books. But this doesn't necessarily represent the total amount

shown on that balance sheet which was actual money we accrued and expended for this purpose.

Q. In fact, what it might represent, might it not, Mr. Ricketts, is a value which is more than \$2,700,000 but merely making an allowance for depreciation over a period of years and then making an adjustment in order to correct your books to the books of the County Auditor or County Tax Collector?

[fol. 1497] A. City Auditor.

Q. City Auditor. Isn't that true?

A. The question is a little ambiguous. I didn't quite get it.

Q. Let me see if I can clear up what I particularly have in mind. Take that figure of \$2,763,707.65. Before that figure was corrected, when you were carrying your own books entirely without regard to what the City Auditor had on his books, do you know what that figure was?

A. Not off-hand. I couldn't state, no.

Q. Was it higher or lower?

A. It was less than that.

Q. It was less than that?

A. Yes.

Q. But by how much you don't know?

A. No, I would hesitate to state.

Q. By the way, you don't pay any Federal income tax on that either, do you?

A. No, sir.

Q. Nor a franchise tax to the State of California?

A. No, sir.

Mr. Geary: That is all.

By Mr. Graham:

Q. You don't pay any taxes at all, do you, for the operation of those facilities?

[fol. 1498] A. Not in the strict sense of taxes, no.

Mr. Graham: No taxes.

Mr. Jones: Sales tax.

By Mr. Graham:

Q. May I ask you one question on this depreciation. That is back on Schedule No. 1 on Exhibit 126. Under "Expenses" there you have two figures for depreciation on

buildings, structures and improvements, one figure in brackets of \$270,652.85, and the next figure is \$286,034.71.

A. There is another figure immediately above the first one you mentioned there, which is the equipment depreciation.

Q. And the \$286,034.71 is the combination of the two?

A. Yes.

Q. That is what I thought. The next question is, "Does that depreciation take into consideration all of the facilities whether they have been constructed out of bond issues or out of operating revenue?"

A. That's right.

Q. And you don't have any concern at all yourself in this report with the question of amortization on bond issues?

A. We don't differentiate, no, between the depreciation on bond investment and the depreciation on the other investment.

Mr. Graham: That is right.

[fol. 1499] Mr. Geary: I have one question, if I may.

By Mr. Geary:

Q. With respect to Schedule No. 1 of Exhibit 126, are the depreciation figures on the buildings that are in that exhibit figures that you yourself calculated or those figures that were given to you by the engineer?

A. We calculated them. The basis was worked up by the Engineering Department. They rated the depreciation and term of life.

Q. You can't tell now by looking at this Exhibit where on Schedule No. 1 with relation to the Grove Street Terminal there is depreciation on buildings of some \$38,000, the basis under which that depreciation was calculated?

A. No, I couldn't.

Q. But you have that material in your office?

A. We have it on the work sheet there in the office.

Q. On a work sheet that you derived that figure from in compliance with the instructions of the Engineer?

A. That's right.

Mr. Scoll: May I ask one more question on depreciation before you go on to something else?

Mr. Ricketts, in connection with my request for statements showing the rate of depreciation and the period of

useful life, which you are going to furnish for the record, will you have that statement show the depreciation data [fol. 1500] which I have asked for broken down to show the rates and useful life on sub-structures below the transit area and floors separately and the sheds themselves?

The Witness: Yes.

Mr. Seoll: That is all.

By Mr. Townsend:

Q. Mr. Ricketts, I have a few questions. Will you turn to Schedule No. 2 of your Exhibit No. 126, please? Four or five lines above the word "Airport" there is an item called "Rentals of trackage, \$6,703.20." Just what does that represent?

A. That is a maintenance agreement with the Southern Pacific and the Oakland Terminal Railroad Company by which they pay us rental for the use of those tracks at Outer Harbor Terminal for the purpose of maintenance.

Q. And that is only at the Outer Harbor?

A. That is all.

Q. Who maintains those tracks?

A. We do.

Q. You maintain them and you likewise maintain the tracks at the Grove Street Terminal?

A. Yes, sir.

Q. But at the Grove Street Terminal you get no rental from the railroads? You simply allow them to use it without any compensation?

[fol. 1501] A. Up to this time we have, yes.

Q. But at the Outer Harbor the railroads pay you for the privilege of serving the Outer Harbor?

A. Yes.

Mr. Jones: Could I qualify that, Mr. Townsend?

Mr. Townsend: Yes.

Mr. Jones: That rental from the Southern Pacific and the Oakland Terminal Railroad does not cover the tracks on the wharf itself but only those in the back which serve that industrial area at the Outer Harbor Terminal, ~~and it~~ is figured on 5 per cent of the original cost.

By Mr. Townsend:

Q. Will you refer now to your Exhibit 126-A? Where, in that exhibit, do you include the expense of checking cargo to and from freight cars?

A. Personal Service.

Q. Well, I see 26 items of personal service. Which one?

A. As far as I know it is under No. 9.

Q. "Receiving and delivering." Are you sure of that?

A. I wouldn't say that it is all in there, no.

Q. How much is in there for checking cargo to and from freight cars, do you know?

A. No, I wouldn't be able to tell you.

Q. Do you know whether any of that checking expense is [fol. 1502] in other of those items?

A. This distribution is made entirely at the terminal and forwarded to me on the payroll, so that my office is not entirely familiar with just how that distribution is arrived at. That's the principal reason why I can't answer your question directly.

Q. Will you turn, please, again to Schedule No. 2 of your Exhibit No. 126? Where in that schedule do you include the revenue that you receive for the checking of freight to and from freight cars?

Mr. Jones: Mr. Examiner, I fail to see the relevancy of the checking of cargo to and from freight cars on a question of wharf storage. For that reason I object to the question.

Mr. Townsend: It is in the Edwards formula. That is why I feel it is necessary to go into it. There is a specific item on that. I think it is certainly pertinent.

Examiner Basham: The objection is overruled.

The Witness: May I have the question again?

Mr. Scoll: By the way, just to clarify the record before he answers that, where, in the Edwards formula, is that referred to, Mr. Townsend?

Mr. Townsend: It is on Schedule B, lines 20 to 26. It is all in there.

Mr. Scoll: Schedule B?

[fol. 1503] Mr. Townsend: Schedule B, sheet 1 of five sheets. Here is an item specifically "Checking account car-loading", and there is a place to fill in under "Wharf demurrage"; "Checking account car unloading", a space to fill in under "Wharf demurrage."

Mr. Scoll: The only one that I find in there that applies to wharf demurrage is checking to and from demurrage.

Mr. Graham: That is all I find, too.



Mr. Townsend: Well, the copy we have has some blank spaces and no "Xs" in Column II under "Wharf Demurrage," "Checking account carloading" and "Checking account car unloading."

Mr. Scoll: O. K. Let it go.

Mr. Townsend: May we have an answer to the question?

(The question referred to was read by the reporter.)

A. There, again, in the Port the billing is made at the various terminals where the movement of cargo originates, and just which items include the checking to which you refer I wouldn't be in a position to state, either, from this exhibit. There is one item definitely there of checking on Schedule No. 2. Whether that is checking in and out of cars in its entirety I wouldn't know without going into the terminal records. It is, though, I am quite sure.

By Mr. Townsend:

[fol. 1504] Q. Well, you just don't know whether it is or not, I gather?

A. Not definitely, no.

Q. Who pays that revenue to the Port of Oakland in connection with checking to and from freight cars?

The Witness: I couldn't hear that at all.

Mr. Townsend: Will you read that question, please?

(The question referred to was read by the reporter.)

A. The various patrons of the facilities.

By Mr. Townsend:

Q. Now, do you know who pays them? Don't you know for a fact that the railroads pay that to the Port of Oakland, at least in many instances?

A. Not necessarily. I don't know that, no.

Q. Well, do you handle the—

A. (Interrupting) I do, but I don't pay any attention to definitely which particular items the railroad company pays and which they don't.

Mr. Townsend: I would like to request that the Port of Oakland produce a statement showing the amount of revenue received from the checking of freight to and from freight cars, and information as to where that revenue is

contained in Schedule 2 of Exhibit No. 126. Also I would like to request information as to the amount of the expense in connection with the checking of freight to and from [fol. 1505] freight cars and where that is included in Exhibit 126-A.

Mr. Jones: Mr. Examiner, we would like to help our friends from the Port of Stockton in their private altercation with the railroad company, but I don't think we should allow this proceeding to be made a fishing expedition to gather that evidence for their use. For that reason I think the request is unwarranted. It does not bear upon any issue in this proceeding.

Mr. Scoll: If I may have my 25 cents worth, I don't think it is covered by the order of notice: That we would take evidence on the cost of wharf demurrage or storage.

Mr. Townsend: Mr. Examiner, I just want to point out that it is pertinent because the Edwards formula requires that you show in this formula that has been submitted to the terminals to fill out the amount of the checking expense to and from the cars in connection with carloading and car unloading, and it says that that is attributable to wharf demurrage. It also asks that you show the wharf demurrage revenue. And I am certainly entitled to argue, if I want to argue it, that some of the revenue that is received by the terminals from the freight to and from the cars and is received from the railroad companies is attributable to wharf demurrage revenue.

Mr. Jones: If Mr. Townsend wants that information [fol. 1506] in the record he can develop it from his own facilities, and if there is nothing to contradict it, of course, he is perfectly capable of arguing that point in a brief. But I don't see why the Port of Oakland should be put to the expense—after all, we have enough information to furnish to the Commission now—of preparing such statements.

Mr. Geary: Is it not also true that Dr. Edwards' report indicated that that particular item should be considered as chargeable to wharf demurrage when the cargo stays on the dock over the free time period?

Mr. Scoll: Now,—

Examiner Basham: (Interrupting) I have heard enough. I don't think it would be material to this issue, so I will not ask the witness to furnish it.

By Mr. Townsend:

Q. Will you refer again to Schedule No. 2 of your Exhibit No. 126, please? You show near the bottom of the list under "Operating Facilities" some revenue for transferring and piling, and you also show a corresponding expense item in Exhibit 126-A. Will you please explain what is meant by those items? Transferring them where? What does it mean?

A. I presume that it is transferring cargo on the docks. But there, again, it originates at the terminal.

Q. What do you mean "It originates at the terminal?"

A. The revenue charge and the expense charge, both. [fol. 1507] Q. Can't you tell us something about that item?

A. I cannot.

Q. Well, so far as you know, the services covered by the revenue item and the expense item are the same, which would indicate that you received \$9,382.65 in revenue and your expense is some \$19,608.00? Is that a fair conclusion?

Mr. Jones: If you know.

A. That the expense is comparable to the revenue? Is that what you mean?

By Mr. Townsend:

Q. That the services covered by those two items are the same and that you are receiving about a little less than half of what it costs you for performing those same services?

A. I presume it is, yes.

Mr. Townsend: That is all I have. Thank you.

Examiner Basham: You are excused, Mr. Ricketts.

(Witness excused.)

Examiner Basham: We will have a short recess.

(A short recess was taken.)

Mr. Scoll: Mr. Smith.

CARL M. SMITH was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

[fol. 1508] By Mr. Seoll:

Q. Will you tell the reporter your name, Mr. Smith?

A. Carl M. Smith; Assistant Secretary and Accounting Officer, Board of State Harbor Commissioners.

Q. Mr. Smith, I show you Exhibit 135, which was introduced this morning. Do you have a copy of that before you?

A. I have some supplements to that that were to be furnished to you this afternoon.

Q. Before we go to the supplements will you take a look at Exhibit 135? Was that prepared by you or under your direction?

A. It was.

Q. And it is an analysis of the expense and revenues of the Board of Harbor Commissioners with particular reference to wharf storage and wharf demurrage, is it not?

A. Yes. There is an exhibit in there pertaining to wharf demurrage and storage contained in there.

Q. That exhibit was prepared in cooperation with Mr. Carlson of the Maritime Commission?

A. It was.

Q. And at our request?

A. Correct.

Q. You prepared some supplements to that exhibit, did you?

A. Yes. Those supplements are the analysis of the [fol. 1509] demurrage at Facility No. 56, and the diagrams of all facilities, both 56 and 45.

Q. The first of these supplements which you have prepared, which I now show you, is entitled "Statement of Commodities and Square Foot Area Occupied, Terminal Demurrage, Pier 56." That corresponds, does it, to the last page of Exhibit 135?

A. It does.

Q. And the last page of Exhibit 135 furnishes the information for Pier 45 and the exhibit which you have just described furnishes it for Pier 56, is that correct?

A. Yes, that's correct, remembering that 56 is three exhibits—there are three exhibits with 56: The main building, the annex first floor and the annex second floor.

Mr. Seoll: I offer the statement of Commodities and Square Foot Area Occupied, Terminal Demurrage, Pier 56, Main Building, as 135-A.

Examiner Basham: Received.

(The statement referred to was marked "Commission's Exhibit 135-A", and received in evidence.)

Mr. Seoll: I offer as the next exhibit a similar statement for the first floor annex at Pier 56 as Exhibit 135-B.

Examiner Basham: It will be received.

(The statement referred to was marked "Commission's [fol. 1510] Exhibit 135-B", and received in evidence.)

Mr. Seoll: And the third sheet entitled "Second Floor Annex," the same description as the others, I offer as 135-C.

Examiner Basham: It will be received.

(The statement referred to was marked "Commission's Exhibit 135-C", and received in evidence.)

By Mr. Seoll:

Q. Mr. Smith, has the Board of Harbor Commissioners made any studies to develop the unit cost of furnishing wharf demurrage and wharf demurrage services on the basis of the Edwards formula?

A. No.

Q. Have you made any studies on any other basis?

A. No.

Q. Are the accounting records of the Board of State Harbor Commissioners kept in such a way that such unit costs would be readily ascertainable?

A. No, sir.

Q. What method do you use in determining the depreciation? Sinking fund or straight line?

A. It is the straight line method. Might I explain that we don't write off depreciation against our income currently. Such depreciation as appears on our balance sheet, which is one of the exhibits here, is a depreciation figure [fol. 1511] that was established as of July the 1st, 1929, determined by study made by the State Department of

Finance in conjunction with the Harbor Engineering Department, and it is on the basis of cost of reproduction less accrued depreciation as of that date.

Q. Have you indicated in Exhibit 135—

A. (Interrupting) My exhibits are not numbered. My pages are not numbered.

Q. Have you indicated in the series of schedules which you prepared, which have been introduced as Exhibit 135, what the percentage of depreciation is for each of the shed areas in Piers 56 and 45?

A. No. We did not indicate the depreciation because we took the net book figure as of the present day, which only has depreciation in it to and including July 1, 1929.

Q. So you have not made any charge for depreciation in determining your annual operating expense for those areas?

A. Not since July, 1929.

Q. Let me ask you, Mr. Smith, do you figure depreciation in when you are determining your annual operating expense for these facilities?

A. No, not current depreciation.

Q. Not currently?

A. No. As I said before, our sole depreciation that appears on our balance sheet is a depreciation that was [fol. 1512] determined at the date of a revaluation, which was back in 1929.

Q. But you don't figure depreciation currently?

A. No, sir.

Q. Do you make any deduction which would be equivalent to depreciation?

A. Well, we feel that our—first, that our maintenance, our high degree of maintenance and addition to the amount that we contribute from our revenues to the amortization of the harbor bonds somewhat nearly meets the theoretical depreciation if it were used.

Q. Well, then, would it be fair to state that the figures which you have in those schedules for the items which you have just named would correspond to what your depreciation charge would be?

A. I would say, Yes, especially when taking into consideration that our Engineering Department has informed me very recently that, if we were to make a revaluation on the cost of reproduction less depreciation as of the current date, that due to the higher material costs and higher labor



costs, that would be taken in as the governing factor into reproduction cost, that the revalued figures would be very close to what we carry them on the books at the present time.

Q. That is, the valuation figure?

A. The valuation figure.

[fol. 1513] Q. Would the amount which you would charge currently to depreciation then be more than you have indicated in maintenance and amortization requirements? In other words, would your depreciation charge be higher if you were to revalue the properties now?

A. Oh, if you were to revalue the properties at the present time and write off accrued depreciation as of this date and the revalued properties before depreciation were higher than they were back in 1929, the depreciation accrual figure would be larger.

Q. Are there any bonds outstanding issued for the acquisition of properties by the Board of Port Commissioners?

A. Yes, sir.

Q. What interest rate do they carry?

A. Four per cent.

Q. Do you happen to know what the tax rate is per hundred dollar valuation on industrial land adjacent to the waterfront of San Francisco?

A. No, sir.

Mr. Scoll: That is all, Mr. Smith.

Cross-examination.

By Mr. Geary:

Q. What is the amount that is expressed in Exhibit No. 135 which represents the payment which is made by the State Board of Harbor Commissioners towards the amortization of its bonds?

A. The amount shown on the balance sheet as on deposit in the three sinking funds less the accrued interest to date: bond interest accrued of \$386,000. So if you would take the \$4,006,346.56 shown on the balance sheet, the first page of the balance sheet, and deduct therefrom the \$386,000, which was bond interest accrued and payable on July 1st, the net result would be the amount resting in the Harbor Commission's fund for amortization of bonds.

Mr. Graham: That does not represent yearly amortization?

The Witness: No, that is correct.

Mr. Graham: Have you any figure that shows your annual amortization?

The Witness: I have in the office.

Mr. Graham: It is not on this exhibit?

The Witness: It is not on this exhibit.

By Mr. Geary:

Q. Is it a stated figure or is it a figure that varies with the amount of income that represents the annual experience of the State Board of Harbor Commissioners?

A. It is a figure fixed by statute. It is a certain fraction of the number of bonds issued and outstanding.

Q. It would have to be subject to amortization each year?

A. Each year; yes, sir.

[fol. 1515] Q. And, as I understand your reply to Mr. Scoll's question, you feel that that amount plussed by the amount that you spend each year for maintaining your property is the equivalent of what would normally be the depreciation charge that would be put on a book if the organization were run on a private industry basis?

A. That's correct, Mr. Geary.

Q. Were you with the Board of Harbor Commissioners at the time that the rate of 25 cents per ton for five days as a wharf demurrage penalty was fixed?

A. Let me say that in connection with the operating matters along the 'front, wharf demurrage rates and so forth, I am not qualified to testify.

Mr. Geary: That is all.

Redirect examination.

By Mr. Scoll:

Q. Mr. Smith, will you turn to the statement showing the value of Units 45 and 56 in Exhibit 135 which you have before you?

A. Yes.

Q. Will you look at Unit 45? The figure is written for land \$305,257.50. Do you see that figure?

A. Yes, sir.

Q. Do you know what area of land that applies to?

A. 488,380 square feet.

[fol. 1516] Q. 488,380 square feet?

A. Yes, sir.

Q. Just below that is Unit 56, and for the purpose of the record this is the thirteenth page of Exhibit 135, considering Account No. 1 as the first page. In Unit 56 the amount for land is \$103,521.25. What area does that apply to?

A. 165,634 square feet.

Q. And Unit 56, annex building filled, \$286,248.40. What area does that apply to?

A. 50,114 square feet.

Mr. Scoll: That is all, Mr. Smith. Thank you.

Recross-examination.

By Mr. Graham:

Q. Mr. Smith, could you furnish us the information in response to Mr. Geary's question with respect to the annual amortization of the bonds for this period covered by Exhibit 135?

A. Very easily.

Q. Fine: Does the Board of Harbor Commissioners pay any taxes of any kind to anybody?

A. No, sir.

Q. Neither State nor Federal?

A. Well, with one exception. I don't know yet whether we are under it or not, but the Railroad Retirement on the [fol. 1517] Belt Railroad.

Q. You are paying it just the same?

A. Well, we are withholding from the employees and I don't know whether we are going—My answer to that should be that at the present time we pay no taxes.

Mr. Kilkenny: You make a contribution to the State, if you don't pay taxes, which is equivalent to it?

The Witness: That is just for the employees retirement.

Mr. Kilkenny: Well, if they are not in the Federal retirement you have to make a contribution to the State Employees Retirement Fund, do you not?

The Witness: Oh, yes. We contribute to the State Employees Retirement Fund.

Mr. Kilkenny: Equivalent to the amount of tax?

The Witness: Yes.

Mr. Graham: That is a pension fund. That is no tax.  
Mr. Kilkenny: It is comparable to it; the same thing.

By Mr. Graham:

Q. What you do pay to the State is the State Retirement Fund?

A. That is correct.

Q. When I am talking about "Taxes" I am talking about [fols. 1518-1522] taxes that an ordinary private corporation pays. You don't pay any of those taxes; do you?

A. We don't pay any of those taxes; no, sir.

Mr. Graham: That is all.

Examiner Basham: You are excused, Mr. Smith.

(Witness excused.)

Examiner Basham: We will adjourn until ten o'clock tomorrow morning.

(Whereupon, at 4:40 p. m., October 7, 1940, the hearing in the above-entitled matter was adjourned.)

[fol. 1523]

### Proceedings

Examiner Basham: Come to order, please.

Mr. Scoll: Before we call Mr. Gates to the stand, Mr. Examiner, may we recall Mr. Smith for a few figures he was going to have for us this morning?

CARL M. SMITH resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

Q. You were asked yesterday, Mr. Smith, for figures of the amount of amortization payments that you made for the fiscal years 1939-1940. Have you got those figures?

A. Yes, sir.

Q. Will you read them into the record?

A. For the fiscal year ended June 30, 1939 \$345,939.33; for the fiscal year ended June 30, 1940, \$345,939.33.

Q. And those were the amortization and interest payments that were derived from the revenues of the Board of Harbor Commissioners?

A. No. Those were just amortization. That was the actual transfer of cash from the revenue funds of the Harbor into the sinking fund for the redemption of bonds. There is an additional earning of the investments in the sinking fund for each of those two years. For 1939 the [fol. 1524] sinking fund investments earned \$104,971.25. For 1940 \$120,596.25.

Q. Were those earnings, interest earned on the amortization reserves, available for amortization payments on the bonded indebtedness?

A. Yes, sir.

Q. Does the Board of Harbor Commissioners construct improvements and betterments out of revenues?

A. Yes, sir.

Q. Do you have figures for the same fiscal years, that is, 1939 and '40, for the amounts disbursed out of revenues for betterments and improvements?

A. I have.

Q. What are those figures?

A. For 1939 \$237,853.53.

Mr. Geary: Is that the fiscal year or the calendar year?

The Witness: The fiscal year. For 1940 \$23,030.14. I might add that over a ten-year period average it would be a great deal more than those figures indicate because we don't always in any particular year do—rather, let me put it this way: Our construction program is not consistent. It is rather irregular.

By Mr. Scoll:

Q. Do you have the average figure?  
[fol. 1525] A. I have the average figure for a ten-year period, which is \$249,000 a year.

Q. What ten years does that cover?

A. 1931 to 1940.

Q. Mr. Smith, does the financial statement that you prepared for us show the annual accruals for interest on the bonds of the Harbor Commissioners?

A. No. It only shows—well, it would show—yes, it would show in there, but there may be some discounts or some

thing else in there. The interest wouldn't stand out clearly fixed on the statement.

Q. Do you have that figure readily available for the fiscal years '39 and '40?

A. Yes. It would be 4 per cent on \$19,303,000.

Mr. Scoll: Thank you. That is all, Mr. Smith.

Examiner Basham: Any questions? (No response.)  
You are excused.

(Witness excused.)

Mr. Scoll: Mr. Gates.

---

MARK H. GATES resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

[fol. 1526] Q. I hand you, Mr. Gates, a diagram entitled "Pier 45, Board of State Harbor Commissioners, Diagram No. 697." Will you state what that shows?

A. It is a diagram of Pier 45 showing the area and the four sheds.

Q. The four sheds are there lettered "A", "B", "C", and "D". Are the sheds used in whole or in part for wharf demurrage or wharf storage, such as there is on the pier?

A. In part, yes.

Mr. Scoll: I offer that diagram for the record.

Examiner Basham: It will be received as Exhibit 144.

(The diagram referred to was marked "Commission's Exhibit 144", and received in evidence.)

By Mr. Scoll:

Q. I hand you a diagram entitled "Pier 56, Diagram No. 695, Board of State Harbor Commissioners." Will you state what that diagram shows?

A. It is a diagram of Pier 56 giving the square foot area.

Mr. Scoll: I offer that as the next exhibit.

Examiner Basham: Received as No. 145.



(The diagram referred to was marked "Commission's Exhibit 145", and received in evidence.)

By Mr. Scoll:

Q. I show you a diagram entitled "Annex to State Prod. [fol. 1527] ucts Terminal, Board of State Harbor Commissioners, Diagram No. 696." That is an annex, is it, to Pier 56?

A. That's right.

Q. And will you state briefly what that shows?

A. That shows—it is a diagram of the Annex, Pier 56, showing the floor area, first and second floors.

Q. And the areas indicated on this diagram are used in whole or in part for wharf demurrage and storage?

A. That's right.

Mr. Scoll: I offer that.

Examiner Basham: It will be received as Exhibit No. 146.

(The diagram referred to was marked "Commission's Exhibit No. 146", and received in evidence.)

By Mr. Scoll:

Q. Taking Pier No. 45, Mr. Gates, is that facility built on piles or is it built on ground?

A. Why, a large portion of it is on solid fill.

Q. That would be the back portion of it; that is, the landward side?

A. Yes; and, of course, the piles on the aprons.

Q. Are there piles supporting part of the shed structures?

A. I think—I am not sure of the dimensions of the fill, but a greater part of the structure is on solid fill. I can't give you a description of the particular part.

[fol. 1528] Q. Do you know whether the sub-structure is concrete or of timber?

A. Well, most of it is solid fill.

Q. That is, the portion of it that is on fills?

A. Well, I believe that is creosote piles with a reinforced concrete jacket. However, I am not very familiar with the engineering problem.

Q. What materials would you say are used in the construction of the sheds?

A. In the sheds?

Q. In the sheds.

A. They are reinforced concrete and steel.

Q. And is the same general material used throughout in the construction of Piers 45 and 56 and the Annex to 56?

A. Well, 56 is built entirely on solid fill. It's reinforced concrete.

Q. But what about the Annex to Pier 56?

A. That is reinforced concrete and it is on solid fill.

Q. Are most of the goods that are stored on the facilities we have been describing either discharged by vessels at the terminal or eventually loaded on to vessel at such terminals?

A. That's right.

Q. And are such goods normally transported to or from ports outside of the State of California?

[fol. 1529] A. Yes. I think most of it would come from outside the State of California.

Q. Have you furnished us with information showing the number of tons of cargo handled over Piers 45 and 56?

A. I think that's contained—yes, it is on our Exhibit 135.

Q. Mr. Gates, has the Board of Harbor Commissioners ever made any study to develop the unit costs of furnishing wharf demurrage or wharf storage?

A. No, they have not.

Q. Have you ever made any attempt to apply the Edwards formula to your costs to determine what the unit costs were?

A. No, we have not.

Q. Are your accounts kept in such a manner as the costs assignable to wharf demurrage and wharf storage could be allocated according to the Edwards formula?

A. No, they are not.

Q. Do you happen to know what the tax rate is per hundred on land adjacent to the waterfront? I am speaking of industrial land.

A. No, I don't know the exact figure for this year. It's something over four dollars a hundred.

Q. That is for near-by industrial land in the same neighborhood as the terminals?

A. That is the City and County tax on all real property [fol. 1530] in the City.

Q. All the waterfront land in San Francisco harbor is under the jurisdiction of the Board of Harbor Commissioners, is it not? Are there any private terminals?

A. No.

Q. Privately owned?

A. No. It is all under the jurisdiction of the Board of Harbor Commissioners.

Q. That is, the Board of Harbor Commissioners has title to all of the waterfront?

A. All the waterfront property.

Q. Except what might be held by the United States?

A. That's right; and the City. Some of it has been turned over to the City for Yacht Harbor and the Aquatic Park.

Mr. Scoll: That is all, Mr. Gates.

Cross-examination.

By Mr. Geary:

Q. Mr. Gates, referring to Exhibit 144, the exhibit shows the total area of the four sheds as 488,380 square feet. That is the square footage inside the sheds?

A. No. I think that's the total area of the whole pier.

Q. Do you know what the square footage is of the sheds individually?

A. Roughly about 400,000.

[fol. 1531] Q. 400,000. So that for the sake of a rough illustration we can take it that each one of those sheds contains approximately a hundred thousand square feet?

A. That's right.

Q. Is all of that space used generally on wharf demurrage cargo?

A. No.

Q. What portion of that would you say was generally represented by your experience as being utilized for wharf demurrage cargo?

A. That is shown in our Exhibit 135, I believe.

Q. Is that in Exhibit 135, or is that in Exhibits 135-A, -B, and -C, because I haven't yet got copies of A, B, and C?

A. No, it is in 1935.

Q. Referring to Exhibit 145, that shows the building and the apron to contain 125,828 square feet, and the second floor of the building to contain 83,126 square feet. Refer-

ring to the first floor, is the apron of that facility used for wharf demurrage purposes?

A. No, not the apron.

Q. And is it fair to say that whatever wharf demurrage cargo is utilized or requires utilization of Pier 56 that it would be put inside the building on the first floor?

A. That's right, or in the Annex.

[fol. 1532] Q. And taking the square footage of the building on the second floor would you say that it was a fair statement to state that the first floor of that building likewise contained approximately 83,000 square feet?

A. No. The first floor of the building contains larger area than the second floor.

Q. About what would you say would be the square footage of the first floor?

A. It says roughly, 125,000. Do you mean inside?

Q. Inside, yes.

A. I couldn't give you that figure without measuring it.

Q. Could you make any estimate of what it would be?

A. No, I wouldn't.

Q. You would not?

A. No.

Q. Is that shown on any of the exhibits that have previously been introduced?

A. I think not.

Q. Would it be possible for you to get that information and furnish it for the purposes of the record, so that we can have a clear line of demarcation between the space which is utilized for wharf demurrage purposes and the space which is not used for that purpose?

A. Yes, that can be done.

Q. And is the inside building space of Pier 56 utilized [fol. 1533] for wharf demurrage cargo?

A. Yes, part of it is.

Q. To what extent?

A. That also is shown in Exhibit 135. I might add to that by saying that the second floor is given over entirely to refrigeration.

Mr. Scoll: That is the second floor of 156?

The Witness: 156.

By Mr. Geary:

Q. Of Pier 56?

A. Yes.

Q. With respect to Exhibit 146, is all of that space utilized for wharf demurrage cargo?

A. All or a part of it.

Q. Approximately how much would you say would be utilized?

A. Well, that is also shown—the figures are shown in Exhibit 135.

Mr. Geary: That is all.

By Mr. Graham:

Q. Mr. Gates, in connection with this Exhibit 146 showing the Annex, is that a separate building from the lower floor of the building shown on Exhibit 145?

A. Yes, it is.

Q. And you move cargo that is going in wharf demurrage through from the channel, through the lower floor of the [fol. 1534] sheds on Pier 56 in order to get to this Annex?

A. That's right.

Q. When you go to the second floor of the Annex you can't move through the second floor of the facility at Pier 56?

A. Yes, it could be done.

Q. Well, do you do that? Do you open those?

A. I am not sure. There are two methods of getting there: One is by a ramp that leads to the second floor.

Q. You mean to the second floor on both Pier 56 and the Annex?

A. Yes. There is a ramp that leads to both those floors and cargo can be loaded or discharged to the second floor from a vessel.

Q. Is there a bridge or a ramp running between the second floor of Pier 56 and the second floor of the Annex?

A. That's right.

Q. So that you can reach that Annex either by means of this ramp on the second floor or by means of crossing the tracks on the first floor?

A. That's right.

Q. And that building is directly north of the facilities on Pier 56?

A. Yes, north of that.

Q. Am I correct in understanding that all of the facilities [fol. 1535] in the Annex and the lower floor of the facilities at Pier 56, although not fully utilized at all times for wharf demurrage, are available for that purpose?

A. That's right.

Q. Will you go back to Pier 45, Exhibit 144? Are those four sheds, A, B, C, and D, also available for wharf demurrage although not possibly all used at one time for that purpose?

A. That pier is used a great deal for transit operations.

Q. Yes, I understand that.

A. And only a portion of it has been used for storage.

Q. Which portion of it and which sheds have been used are available for wharf demurrage?

A. Well, Sheds B and D have been used for wharf demurrage.

Q. What is that?

A. I say, Sheds B and D.

Q. Yes.

A. A very small portion of the outer end of Shed C.

Q. For wharf demurrage?

A. Yes, they have been used.

Q. Is the balance of Shed C available for wharf demurrage if you want to use it for that purpose?

A. Well, it's available, yes. As I say, we have been using those sheds more in transit operations.

Q. How about "A"?

[fol. 1536] A. "A" for transit operations.

Q. If you get ships alongside on the north side of "A" or "C" with cargo that is going under wharf demurrage, how does that get to Sheds "B" or "D"?

A. That can be trucked across.

Q. Those trackage ways between "A" and "B", and "C" and "D" are flush tracks, are they?

A. Yes, they are paved.

Q. So these are not depressed tracks in that way.

A. No.

Q. So that you can go from shipside at Shed "A", let us say, to wharf demurrage space on Shed "D"? That is a possible operation?

A. It can be done, yes. In fact, we have used all four of the sheds for in transit operations nearly at all times.

Q. Yes, I understand that. Mr. Gates, are these facilities available now for that purpose or have they been taken over by the Federal Government for military operations?

A. Well, the Federal Government has made a proposal to the Harbor Commission to take over Pier 45.



Q. That is the whole thing with the four sheds?

A. It hasn't been fully consummated yet.

Mr. Graham: I think that is all.

By Mr. Geary:

Q. If the Federal Government does take over with the [fol. 1537] consent of the Harbor Commissioners the entire space of Pier 45, is it the intention of the Harbor Commissioners to continue the wharf demurrage service at some other pier on the San Francisco waterfront?

A. Oh, such little of it as there is we can probably take care of at some place else.

Q. In addition to Pier 56 or at Pier 56?

A. No, in addition to Pier 56.

Mr. Geary: That is all.

By Mr. Townsend:

Q. Mr. Gates, what is the significance of producing only diagrams with respect to Piers 45 and 56? Are those the only piers where you have wharf demurrage or wharf storage?

A. Yes; that's right, for general cargo.

Q. And on the other piers what do you do if the cargo remains longer than the free time?

A. Well, we either apply what we term our "penalty rate" which is 25 cents a ton for the first five days and 50 cents for each additional five days, or under certain circumstances which are provided for in our tariff we apply what is commonly known as a "bulkhead rate," which is 12½ cents a ton for each seven days.

Q. Then on Piers 45 and 56 do you have still another storage rate that applies to what you call wharf demurrage cargo in those facilities?

[fol. 1538] A. Yes. If it is a regular operation we apply the same rates as we would on other piers. But if it definitely comes in for a period to stay for a period and take the terminal rate, why, then, that is applied.

Q. Are Piers 45 and 56 operated by the State Board of Harbor Commissioners or are those operated by other terminal operators?

A. They are operated by other terminal operators.

Q. And who operates Pier 45?

A. The Golden Gate Terminals.

Q. Do they operate the entire pier? All four sheds?

A. Yes. However, we make use of the pier for other operations whenever we need them; any of the sheds.

Q. Just what do you mean by that?

A. Well, if we have an in transit operation to take care of, and we want to handle it at Pier 45, why, we handle it there. We have the right under temporary assignment or under regular assignment to make use of any piers when they are not being used by the assignees.

Q. In connection with the operation of Pier 45 by the Golden Gate Terminals, who actually retains the wharf demurrage that accrues?

A. The Board of Harbor Commissioners.

Q. It is all turned over to the Board of Harbor Commissioners?

[fol. 1539] A. That is right.

Mr. Scoll: This is all in the record, Mr. Townsend.

Mr. Townsend: I am not sure. Unfortunately, in a hearing like this, which is disjointed, it is difficult to remember what is in the record. I don't want to go into it in detail, but I am just leading up to another point.

By Mr. Townsend:

Q. With respect again to Pier 45; you stated that the Sheds "B" and "D" are sometimes used for transit operations. When they are used for transit operations are those performed by the State Board of Harbor Commissioners or by the Golden Gate Terminals?

A. Sometimes the Golden Gate Terminals do the handling and clerking for the shipper; otherwise not necessarily.

Q. In connection with the storage of cargo on Pier 45 who performs the labor, that is, such high piling or any other handling that may be involved? Is that by employees of the Golden Gate Terminals or the State Board of Harbor Commissioners?

A. Golden Gate Terminals.

Q. Do they perform all of the operations on that pier?

A. Well, not all of the operations. As I say, there are certain operations there that are carried on perhaps with-  
[fol. 1540] out them having anything to do with it at all.

Q. Are Sheds "B" and "D" on Pier 45 reserved primarily for storage or does the transit cargo have the first call?

A. Well, let me say this: That there is usually so little of the storage that in transit operations can be carried on nearly at all times.

Q. Well, is it a fair statement, then, that your storage is placed merely in space that is not needed in transit operations?

A. Well, I wouldn't put it just that way. It might be possible that there would be enough under some circumstances so that we might not be able to use one shed for transit operations, but that usually hasn't been the case.

Q. If you have some cargo on storage, we will say, in Shed "D" and it is finally determined to ship it to some out-of-state destination, would the vessel dock at Shed "D" and lift that cargo, or would the cargo have to be moved to some other pier?

A. No. It would tie up at Shed "D".

Q. So it would go directly from wharf demurrage into the vessel?

A. Yes.

Q. In connection with the operations on Pier 45 who pays for the checking of the cargo?

A. I don't know.

[fol. 1541] By Mr. Read:

Q. Does the Harbor Board pay for it, Mr. Gates?

A. No.

By Mr. Townsend:

Q. Referring to Pier 56, by whom are the operations on that pier conducted?

A. That's the State Terminal Company. Yes, that's the name of it.

Q. Does that include both the first and second floors shown on Exhibit 145 and the Annex shown on Exhibit 146?

A. No. They have nothing to do with the second floor.

Q. Just the first floor?

A. Just the first floor.

Q. And the second floor is the refrigeration terminal of the State Board of Harbor Commissioners?

A. That's right.

Q. Now, what about the Annex as shown in Exhibit 146? Who operates that?

A. The State Terminal Company has so far operated it. However, other operations could be carried on. In other words, neither of those buildings are assigned to the operators. They are simply there at the pleasure of the Board, and if some other operator or shipper wanted space in the Annex, why, they could have it without any reference to the operators of the terminal.

[fol. 1542] Q. Does the State Board of Harbor Commissioners pay for any checking of cargo on the waterfront either in Pier 45, Pier 56, or any of the other piers?

A. We do not. We handle no cargo, have nothing to do with the handling or checking of any cargo except in the refrigeration terminal where we handle the cargo ourselves.

Q. So, in so far as the operations of the State Terminal and Golden Gate Terminals are concerned, if they pay any checking charges or services they would not be reflected by the accounts that you have submitted?

A. Not at all.

Mr. Townsend: That is all, thank you.

By Mr. Graham:

Q. Mr. Gates, just one more question. In connection with the operations of the facilities at Piers 45 and 56, it is my understanding that there are really three sets of rates. That is, a penalty rate, a bulkhead storage rate, and wharf demurrage.

A. Yes.

Q. Wharf storage rate?

A. That's right.

Q. That is right, is it not?

A. That's right.

Q. And the choice of any one of those rates as to any particular lot of cargo is up to the Board of Harbor Commissioners?

[fol. 1543] A. That's right.

By Mr. Read:

Q. Mr. Gates, I want to make sure whether I drew the correct conclusion from one of your answers to a question by Mr. Townsend. The storage at Pier 45 or Pier 56 on

goods stored there, is that published in the tariffs of the assignees?

A. The storage rates are published in our tariff. As a matter of information they probably publish them in their own tariff, but that is a rate that is set by the Board of State Harbor Commissioners.

Q. And those rates are applied at all terminals on the waterfront?

A. That's right.

Q. Does the State attempt to encourage storage at those two particular docks? And when I say "storage", I mean for a term of, let us say, three, four or five or six months.

A. There is no particular encouragement.

Q. Not any more than it would be encouraged at any of the other docks?

A. No.

Mr. Read: That is all.

By Mr. Kilkenay:

Q. Mr. Gates, in your testimony as to ownership, it is a fact, is it not, that all of the piers were built by the State of [fol. 1544] California along the San Francisco waterfront?

A. That's right.

Q. Out of what funds?

A. Either out of the San Francisco Harbor Improvement Fund or out of the Harbor Bond Funds.

Q. How are they located with respect to the submerged tidal waters?

A. I don't quite understand your question.

Q. Are they all built out over the submerged tidal waters of the San Francisco Bay, all of the piers?

A. Some of them are built out over the water; some of them are built on reclaimed land.

Q. Just a few on the reclaimed land? How many?

A. In other words, there is a distinction between a wharf and a pier; a quay wharf or a pier.

Q. Yes.

A. But they are all on State property and they are all on either over the water or on reclaimed land.

Q. Reclaimed land that has been filled in by the State of California?

A. That's right.

Q. That is, previous to the filling in by the State they were tidal waters?

A. That's right.

Q. Partly submerged, at least?

[fols. 1545-1547] A. That's right.

Q. All of the structures including the piers are within the boundaries of the land that is under the jurisdiction and control of the Board of Harbor Commissioners?

A. Yes.

Q. San Francisco Harbor?

A. Yes.

Q. And they are all, of course, in the possession of the Board?

A. They are.

Q. Was there a quay wall built along the land of the bulkheads along the whole course of the Embarcadero?

A. Yes.

Q. What about the lands that now constitute the Embarcadero back of that seawall? Was that filled in?

A. That was filled, yes.

Q. And that was all land owned by the State of California at the time it was filled in?

A. Yes.

Q. In fact, all of these lands including the filled lands and the lands where the piers are located have been owned by the State since the time of its admission into the Union, is that correct?

A. That's right.

Mr. Kilkenny: That is all.

[fols. 1548-1574] B. C. ALLIN resumed the stand and testified as follows:

Direct examination.

By Mr. Scoll:

[fol. 1575] Q. Now, Colonel Allin, will you turn to the determination of wharf demurrage based on the Edwards formula; Exhibit 137. I think you have a copy in front of you. Before we go into that exhibit in detail I would like



to ask you one question about a reconciliation of figures. On the summary schedule, sheet 1 of the formula, Exhibit 137, the revenues from wharf demurrage in line 12 are [fol. 1576] shown as \$15,935.80. Do you find that?

A. Yes, sir.

Q. In Exhibit 136 demurrage revenues, Terminal Division, are shown as \$18,867.41.

Mr. Graham: The total is \$19,962.70.

By Mr. Scoll:

Q. A total of \$19,962.70.

A. Yes.

Q. There is approximately a \$4,000 difference there. Can you explain that?

A. Possibly we have some intrastate business which was based on a per ton basis which makes up the balance.

Mr. Graham: May I ask a question there with your permission, Mr. Scoll?

Mr. Scoll: Yes.

Mr. Graham: Colonel, does this exhibit cover the fiscal year period as does Exhibit 136?

The Witness: Yes, it covers the fiscal year. It covers the same period as the financial statement.

Mr. Graham: And one more question: Do I understand, in response to your last question from Mr. Scoll, that this Exhibit 137 only covers what you believe to have been interstate commerce?

The Witness: Absolutely, yes. I would say also that this determination, this Edwards formula, is based on the [fol. 1577] wharf operation and does not include Warehouse A. If you wish that we can make similar calculation, but we did not have time to do it.

By Mr. Scoll:

Q. That may not be necessary. Your difference of \$4,000 in the demurrage revenues, would that be due to the fact that demurrage revenues from Warehouse A were not included?

A. That's probably the cause of it, yes.

Q. Do you make an allocation or do you keep your accounts in such a way that you know the demurrage revenues from each one of your sheds or warehouses?

A. I wouldn't say that we keep them separate as between the individual transit sheds, but we are able to take what was handled in the warehouses out of the total in order to arrive at an accurate figure.

Q. Then the \$4000 would represent, in your opinion, demurrage that was received from storage, demurrage storage in the warehouses?

A. Yes.

Q. Colonel Allin, this Exhibit 137 was prepared by the Employees of the Port of Stockton, was it not?

A. It was.

Q. By your staff. In making that allocation or in making the study which is contained in the formula, did you follow [fol. 1578] all of the allocations as they are set forth in the Edwards formula, or did you make some departures?

Q. They were all followed. Of course, you have to depart right along for the so-called "judgment" figures. But we followed the rules right through.

Q. Did you make any exceptions in some of the allocations?

A. Not that I know of. There is one point in the very end in the calculation of wharf demurrage. In view of the fact that we consider that our wharf demurrage covers normally a period of about four months out of a year, we increased the figure because we figured that that wharf demurrage puts out of business that much of the wharf during our busy season and we ought to get paid for it the whole year.

Q. What figure is that you are referring to? Will you point to it in the schedule?

A. On Schedule E, sheet 2, line 40.

Q. Will you explain your statement, Colonel Allin?

A. Well, in arriving at this last figure of twenty and a half cents, they have multiplied by three because that used our transit shed for just four months.

Q. What did you multiply by three?

A. We took the floor space cost of \$19,293.05 and divided by the square foot, 34,565—(pause): Going into column (n) there is a variable overhead of \$3797.22; dividing that [fol. 1579] by 6,175 tons; we then divided that by three to get at this result.

Q. You mean you multiplied by three?

A. No, divided by three instead of dividing by twelve.

Mr. Graham: Why is that? Because you only used the facility one-third of the year?

The Witness: Yes, that was the idea.

By Mr. Scoll:

Q. Have you anything you would like to add to that, Colonel Allin?

A. You mean—(pause).

Q. To what you have been describing, the overhead costs per ton month, where you said you divided the annual overhead by three instead of by twelve? Have you anything to add to that point?

A. Not to that particular point; no, sir.

Q. While you are on that page, that is, Sheet 2 of Schedule E, will you look at line 44, the first column, "Total ton-months of storage"? You have the figure "12" in there.

A. That is incorrect.

Q. What should the correct figure be?

A. You would have to multiply it out. You would have to multiply the number of months by the tons.

Q. I see. If you multiply 12 by 6,175 you would get the correct figure, is that right?

[fol. 1580] A. No, sir. If we figure that four months is the average length of time it would be four times 6,175.

Q. I see. While you are on that page still, look at Note 5. According to the Edwards formula, the unit 30 days or ton-months represents a total ton-days of demurrage divided by thirty, and it should be developed by special test or from the billing records. You didn't use your billing records, then?

A. We checked the thing and came to the conclusion that four months was an estimate.

Mr. Graham: Did you use the billing records?

The Witness: No.

By Mr. Scoll:

Q. Then let us correct the exhibit while we are at it. The figure that you would put now in Line 44 opposite the phrase "Total Ton-Months of Storage" would be how much?

A. 24,700.

Mr. Graham: Line 44, that is?

The Witness: Line 43—no, line 44 it is.

Examiner Basham: That is in place of "12"?

The Witness: It should be "24,700".

By Mr. Scoll:

Q. Are there any other corrections that should be made on Exhibit 137, Colonel Allin?

A. One other deviation from the rules. Schedule B, Sheet [fol. 1581] 2, Paragraph 9, shows an apportionment of carrying charges and under Item (d) shows an allocation of 20 per cent to demurrage. We consider that 10 per cent in our case was more proper.

Q. Well, now, will you explain why?

A. Well, we just upon investigation found that it was the proper figure to apply.

Q. Your total carrying charges, of course, are set forth in the exhibit, are they not?

A. Yes, sir.

Q. On Schedule A?

A. Yes, sir.

Examiner Basham: Colonel Allin, you said that 20 per cent should be changed to 10 per cent?

The Witness: Yes, sir. I am looking for my work sheet now.

Examiner Basham: Wouldn't that affect the other percentages, dockage and tolls?

The Witness: Yes, it would.

Examiner Basham: How would they be changed?

Mr. Townsend: Mr. Examiner, the study wasn't completed for those other phases of it. It was just wharf demurrage that we were asked to produce.

Examiner Basham: Oh, I see.

The Witness: That figure was changed because we [fol. 1582] found that the wharf demurrage actually occupied just ten per cent of the floor area of the transit sheds. From a study of it we found that it occupied just ten per cent and we accordingly used just ten per cent.

By Mr. Scoll:

Q. Is that for an annual basis or just for the four months?

A. Just for the four months. That is a maximum. In other words, just actually what was used by the wharf demurrage.

Q. What you really mean, don't you, is that for the purposes of assigning costs that on an annual basis ten per cent of the carrying charges apply?

A. Yes, yes.

Q. Colonel Allin, will you turn to Schedule B, Sheet 3, on Line 89, Unit No. 1 under "Assignment of shed area in square feet"?

A. Yes.

Q. The figure is 345,650 square feet.

Mr. Burgin: That is incorrect, Mr. Scoll.

By Mr. Scoll:

Q. What should that be?

A. No, just a minute. The size of the unit is 345,650 square feet. That is over on the left hand column.

Q. That is right. Now you move over to the wharf demurrage column.

[fol. 1583] A. Used for wharf demurrage was 34,565; ten per cent.

Q. Now, then, what I want to ask you a question about is that 34,565 figure. Does that represent the space actually occupied by the cargo or does it also include aisle space and waste space? To understand what I am driving at, suppose you look at Note 4?

A. Yes, I understand what you mean.

Q. On Sheet 2 of Schedule E?

A. That is the actual measurement of the space used by the stacks of goods.

Q. Then is it correct to say that that represents 60 per cent of the space which has to be allocated to wharf demurrage?

A. Well, I don't know. It represents the exact amount of space used by the stacks of goods.

Q. Let me ask you one further question and I think that will clear it up. Do you agree with the formula used for assigning the amount of space to wharf demurrage that is set forth in Note 4 of Schedule E of Sheet 2 of the formula?

A. Yes, I think that 60 per cent is reasonable. I think I testified to that last time.

Mr. Townsend: Mr. Scoll, may I shorten this? I know what you are driving at. May I shorten this a little?

Mr. Scoll: Sure, go ahead.

[fol. 1584]. Mr. Townsend: Colonel Allin, you have taken care of the aisle space at a later time in this study, have you not?

The Witness: In Schedule E.

Mr. Townsend: Will you explain where you did that, to clear this up?

The Witness: In column (m). That is calculated in there.

Mr. Graham: Column (m) of what? Schedule E?

The Witness: Schedule E, yes.

Mr. Graham: Does that figure shown there of 34,565 on Schedule B, Sheet 3, reappear on Schedule E?

The Witness: Yes, that carries forward.

Mr. Graham: Where is it?

The Witness: (No response.)

Mr. Graham: I said, does it reappear?

The Witness: No, not the figure itself, no. But it carries forward.

Mr. Graham: So it doesn't reappear at all, does it?

Mr. Scoll: Maybe we can clear this up by one more question. All of us have tried several times now.

By Mr. Scoll:

Q. Looking at Schedule E, Sheet 2, you see there under the column (m) opposite Line 40 the figure .0775, which [fol. 1585] represents the adjusted space cost per square foot for 30 days. Now, does that figure represent an adjustment for the 40 per cent of space which is used up in aisles and waste space?

A. It does, Mr. Scoll. Just a moment! Just a moment until I find it.

Q. Does that figure take into account the adjustment upward for the 40 per cent of aisle and waste space?

A. I would have to go back and work through this formula again. It is very confusing. I think, however, it is very clear that this figure covers the actual stacks themselves. Now, if the formula requires that 60 per cent be added in, we will have to add it in.

Mr. Scoll: 40 per cent.

Mr. Graham: When you say, "this figure" you mean 34,565?

The Witness: That's it.

Mr. Graham: Isn't it a fact, then, that going over to Sheet 2, Line 40, column (m) that .0775 is adjusted on the basis of 34,565?



The Witness: That I am not certain. I would have to follow the formula through. That is exactly the point.

By Mr. Scoll:

Q. Could you study the formula over the noon recess, and then when we reassemble you can straighten it out for [fol. 1586] the record?

A. Yes, indeed. I will do that.

Q. One more point, Colonel Allin. Looking still at Sheet 2 of Schedule E, you show in column (f) that you have no labor cost. In column (e) you have your high-piling cost and column (f), which provides space for other laboring costs, you show that you have no labor cost.

A. Yes.

Q. Do you see that?

A. Yes.

Q. Now, then, in view of your testimony with respect to receiving revenues from wharf demurrage in the warehouse areas, Warehouse A, don't you have some transfer charges?

A. We would in that case, yes. We would in the case of any goods moved back and forth to warehouses, yes.

Q. Well, you explained that you had \$4,000 of revenues which were available from demurrage in the warehouse areas. To produce that \$4,000 revenue you had some transfer of goods from the transit shed to the warehouses?

A. That's correct.

Q. And yet, according to this, there are no costs for transfer?

A. This study, as I explained, is confined to the wharf. I said I would be glad to put the figures in for the warehouse [fol. 1587] house, and the warehouse figures will include the cost of that transfer.

Q. In the course of your operations, Colonel Allin, do you have occasion to shift cargo on wharf demurrage from one of the transit sheds to another or from one end of the transit shed to another end?

A. No, no, we don't.

Q. Once the cargo rests it stays there?

A. Yes.

Q. And you never have to move it to make room for transit cargo?

A. No. We try to use good judgment in how much we accept.

Q. But it would happen, as a matter of fact, wouldn't it, that some cargo once in a while at least would have to be shifted?

A. It would happen if it were congested so that it was necessary to move that demurrage freight in order to handle a vessel, yes. But in our case it has not.

Mr. Read: You don't move any, is that the answer?

The Witness: Well, we haven't. Now, we don't know what we might do next month.

By Mr. Scoll:

Q. Suppose you were to have cargo in Shed No. 6 on demurrage. Shed No. 6, you recall, is at the head of Shed [fol. 1588] No. 1, and the steamer to pick it up docked at Wharf No. 2 at the other end of the facility. Now, you would have to shift that cargo down from Shed No. 6 to the wharf, wouldn't you?

A. Well, of course, Wharf No. 2 is an open wharf. The furthest that ship would be away would be Wharf No. 3 and the probability is that it would not be berthed that far away. It would be berthed at 5; probably 5 or 4 at the outside.

Q. Well, suppose it is at No. 4, you still have a good distance to shift it from 6 to 4?

A. We don't shift it.

Q. Somebody—

A. (Interrupting:) Somebody else does that.

Q. You mean that the stevedores—

A. (Interrupting:) Either the ship or the shipper. We don't shift it.

(Witness temporarily excused.)

Examiner Basham: We will adjourn now until two o'clock.

(Whereupon at 12:25 p. m. a recess was taken until 2:00 o'clock p. m.)

[fol. 1589]

#### AFTER RECESS

(The hearing was resumed at 2:00 o'clock p. m. pursuant to the taking of the recess.)

Examiner Basham: Come to order, please.

Mr. Scoll: I understand, Mr. Examiner, that Colonel Allin is a little indisposed and requests to be excused for a little

while, so we can do so and resume the examination of Colonel Allin on Exhibit 137 a little later.

This might me a good time to clear up a point involving certain costs on the State and Golden Gate Terminals which might be assignable to wharf demurrage, and I think Mr. Gates can clear that point up for us.

Will you take the stand, Mr. Gates?

MARK H. GATES resumed the stand and testified further, as follows:

Direct examination.

By Mr. Scoll:

Q. At the end of your testimony this morning, Mr. Townsend and Mr. Graham asked questions in connection with costs on wharf demurrage on Piers 45 and 56. Now, the operators of those terminals operate under assignments from you, do they not?

A. Yes, they do.

Q. And they rent actually only the office space they use?

A. That's right.

[fol. 1590] Q. When cargo is stored on those facilities under wharf demurrage is there likely to be some checking or handling or clerking service involved?

A. Yes, there is.

Q. And similarly, a cost for such a service?

A. Yes.

Q. If there is such a service performed and such a cost incurred that cost, of course, is not incurred by the Board of Harbor Commissioners, is it?

A. No.

Q. Would it be incurred by the terminal operator?

A. That's right.

Q. And how would he compensate himself for such costs?

A. By making a charge against the consignee or the shipper.

Q. And the charge which he makes is in the nature of a service charge or handling charge?

A. That's right.

Q. And it has been testified previously that these operators of Piers 56 and 45 publish tariffs that are on file with the Railroad Commission of California?

A. That's right.

Q. So that it would be correct, then, would it, that in so far as a clerking, handling or checking service is performed by the terminal operator and a cost incurred, the terminal [fol. 1591] operator would make up that cost in some form of the charges, either a handling or a service charge, or other charge which he would charge the cargo?

A. That's right.

Mr. Scoll: That is all, I think.

Mr. Read: Just a minute, Mr. Gates.

Are we to understand by that, Mr. Scoll, the assumption that this charge that is made by the assignee is a full compensation and includes a contribution towards wharf demurrage?

Mr. Scoll: No, I don't think we are at all, Mr. Read. All this implies is that there is undoubtedly an additional cost to the space cost involved in the wharf demurrage service on Piers 45 and 56, and that that cost is compensated for in the charges which the terminal operator charges. In other words, the record now shows that in addition to the space cost which the Board of Harbor Commissioners incurs for which it compensates itself by the demurrage revenues which it receives, there is another cost—an operating cost—which the operator incurs and which he is compensated for out of the charges which he charges against the shipper of the cargo for the vessel.

Mr. Read: But you still haven't determined what the cost of that assignee is?

Mr. Scoll: What the unit cost is, no.

[fol. 1592] Mr. Read: All right. That's enough.

#### Cross-examination.

By Mr. Graham:

Q. Mr. Gates, does that user of your facility in 45 and 56 pay any rental for the use of the facility?

A. No. You mean the operating company?

Q. Yes.

A. No. They pay just rental for their office space.

Q. And as to whether their tariff does or does not show what charges they make against this cargo which is held on wharf demurrage, you don't know?

A. No, I don't know.

Q. You don't know whether it is in the tariff or not?

A. No. I think their tariff is on file in this case.

By Mr. Geary:

Q. If you did charge them rent what would the basis of the rent charge be?

A. If we charged them rent?

Q. If you charged them rent.

A. Well, I don't think that we can charge them rent and then take the demurrage.

Q. No. But if that facility were being rented in the same way that your other facilities on the waterfront in San Francisco were being rented to shipowners, what would the charge for that be?

[fol. 1593] A. The charge would be 1.2 cents per square foot per month.

Q. That would be a charge of 1.2 cents per square foot per month for the entire building, not merely the dock area?

A. The entire area.

Q. Is that the present charge or is it the charge which is proposed to be increased?

A. No, that is the present charge.

Q. The present charge?

A. In other words, that is being charged right now.

Q. There is, however, contemplated an increase in that charge, is there not?

A. No, no.

Q. Isn't there at the present time a proposed increase in that rate on the San Francisco waterfront?

A. That is the rate that is being talked about.

Q. That is the rate that is being talked about?

A. In other words, I don't know whether you want this in the record or not, but I will explain that up until the first of July of this year and for many years past there is a charge of 6 mills per square foot per month to intercoastal and off-shore operators and a charge of 1.2 cents to inland water and coastwise. On July 1st the rate for intercoastal and off-shore, foreign and off-shore, was increased to 1.2 to make it the same as that for coastwise and inland water.

[fol. 1594] Q. If you charged 1.2 cents per square foot per month for those facilities and let the terminal operator keep the wharf demurrage revenue, would you receive more or less than you receive at the present time?

A. I couldn't answer that.

Mr. Geary: That is all.

By Mr. Graham:

Q. Mr. Gates, in connection with this 1.2 cents that you have charged to companies which rent your piers, in those cases where there is a charge made against cargo either in the guise of demurrage or bulkhead storage or for any other reason, you receive all of that charge yourself, don't you?

A. That's right.

Q. So that in those cases the dock operator pays you a rent for the occupation of the space and you still receive from the cargo a fee for the occupation of the same space?

A. That's right.

Q. Whereas in the case of—

Mr. Scoll: (Interrupting:) Just a moment, Mr. Graham. I think that answer should be amplified.

Now, the operator does not pay a rent for the space on which the cargo is stored, does he?

Mr. Graham: Yes.

The Witness: He pays the rental for the whole area.

[fol. 1595] Mr. Graham: He pays for the whole dock.

The Witness: He pays for the whole dock.

By Mr. Graham:

Q. To go back again to the same spot, on piers 45 and 56 the only difference between that situation which we have just discussed is that on those two piers you don't receive any rental money at all; you merely receive money that comes from the cargo for the space the cargo occupies?

A. Yes, but—

Q. (Interposing:) Call it "Wharf demurrage" or whatever you want to call it.

A. But the conditions are different on the regularly assigned piers. In the first place, we do get whatever demurrage charges accrue.

Q. In either case?

A. Because of the fact, however, that there is a penalty rate there isn't very much cargo remains on those piers after the free time. On the other hand, when we are dealing with a bulkhead rate we require that the assignee of the pier make application for that rate and that he is agreeable



to allowing that cargo to stay on the pier or else we don't grant the bulkhead rate.

By Mr. Read:

Q. It depends, then, on the occupant of the pier?

[fol. 1596] A. For the very purpose that Mr. Graham is bringing out: That he is paying the rental to the Board for that pier for operating purposes, for transit business and not storage. And so if there is some little lot of cargo that under our rules is privileged to have a bulkhead storage rate apply, we don't allow it to stay there if it interferes with the operations of the assignee of that pier.

Q. In other words, he has priority if it comes to a case of deciding whether the goods should be left on the dock?

A. In other words, to avoid any complaints from the assignee of the pier we have made a rule that he must apply for the storage.

By Mr. Graham:

Q. In the case of Piers 45 and 56 the granting of the facilities to the operators without rent enables them to make their net profit from the services that they render without any offset for the cost of the facilities?

A. That's right. I might go a little farther so long as we are in this rental business and explain also that the Board has just made a change in the tariff in regard to rentals to be effective on the 15th of this month on open berth assignment. We never charged any rental before on those assignments, and now every ship will have to pay a per diem rate of rental for the occupancy of a pier.

[fol. 1597] Q. In addition to dockage?

A. In addition to dockage. And if a pier that is already assigned is used, then that rental will be refunded to the regular assignee of the pier.

By Mr. Townsend:

Q. Mr. Gates, I want to ask a few questions with respect to Piers 45 and 56. Do the figures that you have submitted here in Exhibit 135 cover the carrying charges on the facilities that are included in Piers 45 and 56?

A. The carrying charges?

Q. Well, somewhere in there you have the cost of maintaining those particular piers, do you not?

A. Oh, yes.

Q. And the other incidental charges in connection with those facilities?

A. I am not familiar with the details of that statement. Mr. Smith is and he can explain what is included in those charges.

Q. Now then, referring again to those two piers, is it correct that you do not have in any of those figures that you submitted here anything that would show any expense in connection with collecting incident to wharf demurrage on those two piers?

A. No, no clerk.

Q. And there is likewise nothing with respect to any expense of handling high-piling, is there?

A. No.

Q. And, again confining my questions to those two piers, there is nothing in there including the expense of cleaning the sheds and docks?

A. No.

Q. Nothing for watchmen in connection with the wharf demurrage?

A. No, no watchmen.

Q. How about power for dock use?

A. I will have to refer to Mr. Smith and have him answer those questions. On some of those details I am not familiar with what is in there. I know that some things are not in, but I don't know what the others are. I would rather you would ask Mr. Smith those questions.

Mr. Townsend: I will accept his answer if that may be done right now. I would like to run down the list. Perhaps he had better come forward.

Examiner Basham: Let us get through with Mr. Gates.

Mr. Scoll: Why don't you ask Mr. Smith if he prepared the exhibit and he is more familiar with it?

Mr. Townsend: All right, then. One more question along that line of questioning of Mr. Gates.

By Mr. Townsend:

[fol. 1599] Q. In so far as your docks other than Piers 45 and 56 are concerned, where you say you sometimes have some storage or bulkhead storage or whatever you call it, do you perform any of the labor in connection with that type of storage by employees of the Board?

A. No. The only cost there would be the regular cost of our wharfinger or keeping track of it, billing it.

Q. But those expenses in connection with wharf demurrage on the piers other than 45 and 56 would also be performed by the assignees of those particular piers?

A. That's right.

Q. With respect to the checking of cargo to and from wharf demurrage on piers other than 45 and 56, do you know who performs that service?

A. Well, our wharfinger keeps track of that.

Q. Well, does the wharfinger—

A. (Interrupting:) Now, the actual checking for other purposes is done by the steamship company on the pier, the assignee of the pier, no doubt.

Q. For the purpose of keeping a record incident to wharf demurrage, would that checking be done by the employees of the assignee of the pier?

A. Our wharfinger keeps the record of the cargo there on those piers on demurrage.

Q. Who actually does the checking?

[fol. 1600] A. Well, he checks with the representatives of the steamship company.

Q. And then the steamship company does have some expense incident to checking that cargo?

A. I think so.

Q. And that would be the staff of men, for example, who do the actual checking, and your wharfinger is just there to go along with them and make a record of it, so to speak?

A. That's right.

Mr. Graham: Mr. Townsend, do you include when you say "steamship company" the assignee of these two respective piers?

Mr. Townsend: My last few questions, you understood, were directed to the piers other than 45 and 56?

A. That is my understanding.

Mr. Townsend: I think that is all I have of Mr. Gates.

By Mr. Read:

Q. Mr. Gates, you make no charge against the assignees of Piers 45 and 56 as you do against the assignees of the other docks?

A. That's right.

Q. Did you say that if you did make such a charge then you couldn't very well collect demurrage charges?

A. I will put it the other way: If we made a charge for [fol. 1601] the rental I don't think that they could very well pay that rental out of what they get for handling the checking and one thing and another.

Q. Yet at the other piers where steamship lines have the assignees and you get paid your regular space rate you also take the revenue from the demurrage?

A. Yes, we take the revenue from the demurrage. There is very little of it, to speak of.

Q. Do the assignees at Piers 45 and 56 have to give consent to this storage before it is permitted the same as the assignees of the other piers do?

A. No.

Q. Is it up to their judgment whether to take it or not, or does the Harbor Board decide that?

A. It is pretty much of an understanding among us always. The stuff is moving in and out and they talk to us about it.

Mr. Read: That is all.

Mr. Townsend: I have one more question, if I may.

By Mr. Townsend:

Q. With respect to piers other than 45 and 56 does the State Board of Harbor Commissioners issue any documents in the nature of dock receipts or warehouse receipts for cargo that is held there under wharf demurrage or wharf storage?

A. They do not.

[fol. 1602] Q. In other words, you don't assume any custody over those goods?

A. No.

Q. Is the same situation true on Piers 45 and 56?

A. That's right.

Mr. Townsend: That is all, thank you.

Redirect examination.

By Mr. Scoll:

Q. One further point: Mr. Gates, will you supply for the record any changes that have been made in your tariff in-

troduced into the record—I don't have the exhibit number—any changes that have been made since February 21, 1940 down to date?

A. February 21? I shall be glad to do that.

Q. If you have re-issued your tariff and have a current tariff effective, if you will supply that for the record that will suffice.

A. I will be glad to do that.

Mr. Scoll: The same request goes to all the other respondents. I would like the record to show that the tariffs now on file or made a part of this record, rather, be brought down to date.

Mr. Read: Suppose each respondent furnishes a copy of the current tariff, Mr. Scoll, wouldn't that do?

Mr. Scoll: That will do fine.

[fol. 1603] The Witness: Mr. Examiner, Mr. Geary asked me a question this morning in regard to the areas inside the shed.

Mr. Geary: That is right.

The Witness: I find that—

Mr. Geary: (Interrupting:) That is on Pier 56.

The Witness: On Pier 56 I find that the area inside the shed is 108,390 square feet.

Mr. Geary: That is on the first floor.

The Witness: That is on the first floor.

Mr. Geary: Thank you very much.

(Witness excused.)

Mr. Townsend: May I ask some questions of Mr. Smith now?

CARL M. SMITH resumed the stand and testified further as follows:

Further cross-examination.

By Mr. Townsend:

Q. Mr. Smith, I want to go back to some of these detailed questions I was asking Mr. Gates. Do the figures that you have submitted, and I will assume that they would be in Exhibit 135, cover the carrying charges on Piers 45 and 56? And by "Carrying charges" I mean such things as

maintenance, depreciation, interest on investment and so forth.

A. Yes, but not definitely shown in the statements. But [fol. 1604] they are included in the total.

Q. They are in there somewhere?

A. They are in there.

Q. And are the carrying charges on the land on which Piers 45 and 56 are located included in those figures somewhere?

A. The carrying charges on the land? No.

Q. Is there anything included in the figures that you have submitted that would cover superintendence on Piers 45 and 56?

A. There is a total item in the exhibit here, but may I explain a bit about that?

Q. Yes.

A. In our exhibit that we have shown here there are only two instances where any direct charges are shown against Facilities 45 and 56, and that is direct maintenance where the crews have gone down and actually performed repair work on those two facilities. That is indicated in the exhibit. But in addition to that we have large amounts of other expenditures in conjunction with operating all facilities on the San Francisco waterfront which, if a proportion of them were going to be allocated against any particular facility, such as 45 and 56, it would involve a distribution problem which we haven't gone into on the exhibits submitted.

Q. What are the expenses of the latter character, for illustration?

[fol. 1605] A. Well, referring to Account 2, Schedule 2 of our exhibit there is administration, there is the entire group of port operating expenses. Then in port maintenance, outside of the direct maintenance contained in Account 605 and Account 606, there are many other maintenance items there that all have relationship to performance of maintenance work on the San Francisco waterfront, but they are not allocated against any particular facility. For instance, in explaining that, we will take possibly one item here: Dredging basins in channels. That would be one of them. Also the maintenance of pile driving equipment, the maintenance of tugs and dredges. That is all part of our general maintenance cost in the San Francisco Harbor, but we don't allocate it against any facilities.



Q. If I understand you correctly, the situation is briefly this: That in so far as Piers 45 and 56 are concerned you do have in your figures that you have submitted in this proceeding, although they are not specifically referred to Piers 45 and 56, direct maintenance costs, what we might call indirect or general maintenance costs and what we might call general and administrative expenses?

A. They are in here; yes, sir.

Q. But there are no, what we might call, dock operation expenses shown in there in so far as Piers 45 and 56 are concerned?

[fol. 1606] A. By "dock operation expenses" you mean the handling of cargo?

Q. Well, let me show it to you this way. I show you Schedule B, Sheets 1 and 2 of the so-called Edwards formula, and I happen to be referring to Exhibit 137. Will you examine the items under Section II, dock operations, and tell me whether any of the items listed there are expenses shown in any of your exhibits covering Piers 45 and 56?

A. There are two items there included in that category that are contained in our exhibit here, although not directly allocated against those two particular units. That's power for dock use and water for dock use.

Q. Other than those there are none of those items?

A. There are not; no, sir.

Q. Referring again to Schedule B of Exhibit 137, which is the Edwards formula, and turning this time to Sheet 3 of that exhibit, do you include in any of the figures that you have submitted any of the expenses that might be assignable to the Piers 45 and 56 under the heading of Section V, General and Administrative Expenses, or let me put it the other way, Are those all included?

A. Yes, they are in there.

Mr. Scoll: They are not assigned to the piers?

A. No.

[fol. 1607] Mr. Townsend: That is all I have, thank you.

By Mr. Read:

Q. One more question. Mr. Smith, with reference to Exhibit 135, Account 2, Schedule 2, an item of \$52,649.76, Account No. 505, State Refrigeration Terminal; does that include the cost of an engineer or engineers and others who are employed by the Harbor Board there?

A. That includes all expenses of operating the State Refrigeration Terminal. That's the refrigeration engineers, the refrigeration attendants and the superintendent and his assistant.

Q. I see. And you have isolated from all other expenses the expense of this State Refrigeration Terminal?

A. Absolutely. That's a clean-cut figure representing the costs of operating the State Refrigeration Terminal for cold storage purposes.

Mr. Read: That is all.

Examiner Basham: Is that all? (No response.)

You are excused, Mr. Smith.

(Witness excused.)

Mr. Scoll: Mr. Parr.

FRED D. PARR resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

[fol. 1608] Q. Mr. Parr, I have requested the several respondents in this case to furnish for the record the information that will show the amount of cargo on storage during the last fiscal year of their operations expressed in tons and the amount of cargo that moves over the terminal or moved over the terminal in the same period, those figures to exclude pipeline cargo and to segregate lumber. Have you furnished those figures?

Mr. Read: Mr. Scoll, I will introduce those with another witness.

My understanding was that Mr. Parr came up to testify regarding Exhibits 133 and 134. Furthermore, I did not understand that there was to be an exclusion of pipeline. I had no understanding and wouldn't have assumed it to be such, since we are relating these charges to total cost of operation, and pipeline is simply one of the services included within the total operation of the piers.

Mr. Scoll: Yes. My purpose in excluding pipeline, Mr. Read—we brought that up in connection with Oakland and you were here yesterday, I believe, when it was discussed—

is to deal as far as we can with cargo that would be stored on the wharf and to compare that with all other transit cargo.

Mr. Read: Well, pipeline cargo is transit cargo just as much as packaged cargo.

[fol. 1609] Mr. Scoll: Can you segregate pipeline cargo?

Mr. Read: I will try to and I believe we can. However, if you will allow me to introduce that through another witness after Mr. Parr, I think we will satisfy your needs.

Mr. Scoll: All right. Thank you very much.

By Mr. Scoll:

Q. Have you a copy of Exhibit 133, Mr. Parr? Will you turn to the first sheet "Schedule No. 6" I believe it is named there, showing the operations for 1935? I note that in your operating expenses the provision for maintenance and upkeep total is \$376.50. Does that represent the total expenditures from all sources for maintenance and upkeep of the Terminals Nos. 1 through 4 for that year?

A. That's so far as our corporation is concerned.

Q. Well, there were no maintenance expenditures, then, by the City of Richmond shown?

A. That's correct.

Q. I see that there is no provision for taxes made on that sheet showing what was spent for taxes in that year. I presume that means that the Parr-Richmond Terminal Corporation paid no taxes.

Mr. Read: When you speak of "taxes", Mr. Scoll, do you refer to property taxes?

Mr. Scoll: Well, I don't see any tax item.

[fol. 1610] By Mr. Scoll:

Q. Let me ask you a further question: The major tax items in your operation would be property taxes, would they not?

A. That's correct.

Q. Looking at the year 1939 I see no provision there for payment of either property taxes or security taxes.

Mr. Read: If you look at the last page, Schedule 7, Mr. Scoll, you will see an entry there reading "Payroll taxes, \$3,056.72."

Mr. Scoll: Yes, all right. That takes care of the security taxes.

By Mr. Scoll:

Q. What about property taxes?

A. We pay a property tax. I don't just see it in this statement, Mr. Scoll. I shall be glad to furnish you a detailed statement of the taxes paid.

Q. Well, you pay a property tax. Is it a City tax?

A. We pay a City tax, also a County tax. But on part of our improvements we do not pay any City tax.

Mr. Graham: Mr. Scoll, may I suggest if you are going to get any statement that you include not only property taxes but corporate franchise taxes and income taxes that might be chargeable against these operations?

Mr. Scoll: I am not quite through yet of the things that I want to get on the list.

[fol. 1611] By Mr. Scoll:

Q. Looking through the list Exhibit 133, the years 1935 to 1939, I find no provision for depreciation on the improvements on real property.

A. The reason for that is that part of the facilities are leased from the City of Richmond, in which we have no investment; and the other is the money advanced by us to pay for certain improvements which are being paid for by the City of Oakland.

Q. As to the first part of your answer, which of the terminals are leased?

A. The Terminal No. 1, Terminal No. 2, the north half of Terminal No. 3 and No. 4.

Mr. Read: All of No. 4?

The Witness: All of No. 4.

By Mr. Scoll:

Q. So that we have remaining to deal with one-half of Terminal No. 3. How are those payments that you referred to, I believe you said, from the City to the Terminal Company?

A. That's correct.

Q. How are they reflected in Exhibit 133?

A. They come back through the Improvement Fund and as the earnings are created on the City's portion of the facilities those moneys are used to pay us for the cost of the [fol. 1612] improvements on the south half of No. 3.

Mr. Read: The next to last line, Mr. Scoll, on Schedule No. 6 shows the distribution of profits, City of Richmond, and then certain amounts. Those are the amounts that are applied against the indebtedness to the Parr-Richmond Terminal Corporation.

By Mr. Scoll:

Q. And then turning to the sheet which has the year 1939 on it, the portion which accrues to the terminal from the City of Richmond is \$33,063.02, is that correct?

A. That's correct, except this, Mr. Scoll: The first two items, the \$15,536.77 and the \$7,442.63, apply against this fund. The \$10,083.62 is paid to the City in cash. The lease on Terminal No. 4 is different from the lease on the other facilities.

Q. So the \$7,442.63 shown at the bottom of the page for 1939 represents in effect funds which the Terminal Corporation holds back to reimburse itself for the half of Terminal No. 3 which the corporation constructed, is that correct?

A. Yes, and in addition thereto the \$15,536.37.

Q. And that is for similar arrangement applicable to Terminals Nos. 1 and 2?

A. That is correct.

Mr. Read: No, wait, Mr. Scoll! I think there is a misunderstanding there. The distribution of profits from [fol. 1613] Terminals 1 and 2, together with the distribution from Terminal No. 3, are all applied against the indebtedness on Terminal No. 3.

By Mr. Scoll:

Q. Well, those amounts \$7,442 and \$15,536, are credits to pay off the Terminal Corporation for the construction of facilities?

A. That's correct.

Q. And when you have reimbursed yourself completely for those structures, then I presume they revert to the City of Richmond?

A. Not in this case, no.

Mr. Read: Mr. Scoll, it is just one structure, bear in mind. I don't know whether you have that clear or not.

Mr. Scoll: I have the map here, but it isn't entirely clear from this map.

Mr. Read: The City is not indebted to the Parr-Richmond Terminal Corporation in any way for Terminals 1 and 2. The indebtedness is entirely on No. 3.

Mr. Graham: Don't they pay for No. 3's indebtedness on the earning from No. 2?

Mr. Read: That is what I said.

Examiner Basham: Off the record.

(Remarks outside the record.)

{fol. 1614} By Mr. Scoll:

Q. To further clarify the point, let me ask a couple of more questions. Terminals Nos. 1 and 2, which is in reality one building on the slip, is it not?

A. No. 1 is at the Outer Harbor, No. 2 is at the head of the Inner Harbor.

Q. Oh, yes. I am sorry. Let us take Terminal No. 1 alone. Under what arrangement was that constructed?

A. It was constructed by the City of Richmond.

Q. And I believe you have stated that you lease that?

A. Yes.

Q. From the City of Richmond?

A. Yes.

Q. Now, Terminal No. 2 is similarly leased from the City?

A. That is correct.

Q. And was constructed by the City?

A. Yes.

Q. Then is it correct to say that the \$15,536.77 at the bottom of page 1939 is a credit to reimburse the Terminal Corporation for its investment in the structure comprising one-half of Terminal No. 3?

A. That's correct.

Q. And the same thing is true of the \$7,442.63, at the foot of the schedule referring to 1939?

{fol. 1615} A. Yes.

Mr. Read: Mr. Scoll, it might help you, and clear up the record, too, to call your attention to Exhibit 134, the Parr-Richmond Terminal Corporation balance sheet as of December, 1939 where under the heading "City of Rich-



mond Improvements" there is the item \$183,802.81. That is the amount of money owing the Parr-Richmond Terminal Corporation by the City of Richmond at that time against which these credits are applied, thereby diminishing that amount as each credit to the City of Richmond is applied against the debit.

By Mr. Scoll:

Q. I don't see anywhere on Exhibit 133 any accruals for depreciation and I don't see anywhere in Exhibit 134 any amount set aside for depreciation, except the depreciation on fish plant facilities, which is set forth in Exhibit 133. Are there any depreciation charges or accruals made on plant facilities?

A. None other than the fish plants and furniture and fixtures.

Q. The fish plants are not a terminal property, are they?

A. They are adjacent to the terminal property.

Mr. Read: They are non-operative properties, Mr. Scoll.  
[fol. 1616] The Witness: Non-operative.

By Mr. Scoll:

Q. Has there been any change in the amount of annual carrying charges on the corporation's properties, terminal properties, since 1935?

A. No substantial change.

Q. I notice also on Exhibit 133 that there is no item for interest charges. Does the Terminal Corporation pay any interest charges on bonds or other indebtedness related to the construction of facilities?

A. Yes.

Q. Where is that report?

Mr. Read: Look at Schedule No. 2 attached to Exhibit 134, Mr. Scoll.

The Witness: Mr. Scoll,——

Mr. Scoll: I am looking at Schedule 2. What item are you referring to?

The Witness: Mr. Scoll, may I answer that? You are looking at a statement as of December 31, 1939 when we have taken our profit or loss, and these items have been marked off in our loss for the year and are reflected in the net profit shown at the bottom of the page as \$23,964.27. If

you would like to have a statement prior to the time that we took our profit and loss showing this net result, we shall be glad to furnish it.

[fol. 1617] By Mr. Scoll:

Q. Yes. I would like to have a statement which shows any payments for interest on bonds, if any were made.

A. We pay interest on bonds of around \$13,000 a year and then on the bank loans of possibly five or six thousand a year.

Q. Well, such interest payments, it seems to me, should appear in your Exhibit 133, your statement of revenues and expenses, as well as the overhead items. So I suggest that, if you will, you submit a revised Schedule No. 7 which will show interest payments. Will you do that?

A. We will be glad to do that. Of course, this statement deals entirely with our operating arrangement with the City of Richmond, and then our other statement has to do with our general operations and we have always carried that item as a part of our general operations and not as a dock operation.

Q. Will you also show in your Revised Schedule No. 7, the taxes that are paid, including Federal income and property and corporate franchise taxes?

A. Yes.

Q. There is an item in here for general insurance \$2,330. Is that all the insurance expense that is incurred or was incurred during the year 1939?

A. Yes.

[fol. 1618] Q. Does that include insurance on the terminal sheds and fire and other coverage on the terminal properties?

A. Yes, except the City's portion, which the City insures itself.

Q. Well, what portion does that \$2,330 item apply to?

A. That would apply to our south half half of Terminal No. 3 and such equipment and furniture as we might have.

Mr. Read: That equipment and furniture, Mr. Parr, would be located at all docks, would it not?

The Witness: Yes.

By Mr. Scoll:

Q. Then you split the other overhead expenses between yourself and the City of Richmond on the terminals which you lease from the City?

A. Yes.

Q. The same way as you do insurance?

A. We don't split the insurance because the City pays the insurance direct on its portion. We have to pay the insurance on the labor and all things having to do with the operations.

Q. Of the other terminals?

A. Yes.

Q. Is that included in the \$2,330?

A. Yes.

Q. Mr. Parr, perhaps some of these apparent omissions in [fol. 1619] the operating statement here might be clarified by reference to such statements as the parent corporation operating the terminal and the parent of the Parr-Richmond Terminal Corporation keep. Do you have any statements for the parent corporation available?

A. We have them at our office.

Q. Would they contain information showing the taxes?

A. No, that's all in the—

Q. (Interrupting) Insurance and other matters?

A. No. That is all in the Parr-Richmond Terminal Corporation, our general statement, which we will be glad to furnish to you.

Q. What about dredging costs? Do you have any dredging costs?

A. We have some dredging in connection with our fish canneries, our non-public utility operations, and the other dredging is taken care of by the City and the Federal Government.

Q. The maintenance and upkeep item in the year 1939 here is \$354.95 for Terminal No. 3. In other words, that applies only to one-half of the Terminal No. 3?

A. That is correct.

Q. Well, then, you have \$8,631.51 maintenance and upkeep for Terminal No. 4. That terminal is leased and you provide for the maintenance?

A. That's correct.

[fol. 1620] Q. And upkeep?

A. That's correct.

Q. Do you still carry the maintenance on Terminal No.

A. Yes.

Q. Has the Parr-Richmond Terminal Corporation ever made any study that would develop the unit cost of furnishing wharf demurrage or wharf storage on the facilities which it operates?

A. We made some studies since this hearing was called.

Q. Is this the study, Exhibits 133 and 134, or have you some other information?

Mr. Read: We have nothing in the way of an exhibit, Mr. Scoll. When I put the next witness on we will introduce certain evidence regarding some investigations we have made trying to determine some of the factors. But, of course, not all of them, as we explained to Mr. Carlon, because of the complicated structure of the accounts in Richmond with the City being mixed up in the thing we didn't have the time to do it.

Mr. Scoll: Are you going to put on an accounting witness?

Mr. Read: I am going to put on Mr. Engel, our operating manager, who is quite familiar with the operations of the terminal.

Mr. Scoll: All right. That is all, Mr. Parr.

[fol. 1621] Cross-examination.

By Mr. Read:

Q. Mr. Parr, you and I have discussed the Dr. Edwards formula to some extent with reference to this demurrage question, have we not?

A. Yes.

Q. You are familiar with it to this extent: That you know that Dr. Edwards' formula contemplates a charge that he calls "Receiving and Delivering Charge" in addition to the factor for storage?

A. Yes.

Q. Do you consider it reasonable to impose a charge of that sort on cargo that is under demurrage when you do not actually perform any additional service?

A. No.

Mr. Geary: May I ask, Mr. Examiner, what difference it would make whether Mr. Parr considers it reasonable or

not? Isn't that something which we are here determining, whether the Maritime Commission is going to make an order in this case to determine whether it is or is not reasonable?

Examiner Basham: I take it that he is testifying as an expert on transport operations.

By Mr. Read:

Q. Mr. Parr,—

[fol. 1622] • Mr. Geary: (Interrupting) You needn't bother qualifying Mr. Parr. So long as the Examiner has overruled the objection, go ahead. I will stipulate to his qualifications.

By Mr. Read:

Q. We also discussed the theory expressed by Dr. Edwards at pages 157 and 158 of the final report, where he says: "Charge the labor of checking cargo to and from the vessel or to and from the shippers and consignees to Service Charges." Then it goes on to say "If, however, such cargo remains in the hands of the terminal beyond the free time period and passes into the status of wharf demurrage or storage, the subsequent cost of delivering it to the consignee should be charged to wharf demurrage or storage. This is upon the principle of the carrier's responsibility for recompensing the terminal for such clerical expenses ceases upon the expiration of the free time period."

As a terminal operator do you agree with that theory?

A. No. I would think, Mr. Read, that—

Mr. Scoll: (Interrupting) A little louder, please.

A. (Continuing) I would think that your service charge would cover all of the costs involved in that item.

By Mr. Read:

Q. Do you consider demurrage or storage charges a source of additional revenue that you would not otherwise [fol. 1623] derive if it were taken from the terminal within the free time?

A. Yes.

Q. If this Commission should issue orders increasing the storage charges which would result in the loss of the revenue that is now being derived from that source, would you

have any other services from which you could recover that loss?

A. No.

Q. I will ask you the next question strictly with regard to the operations of the Parr-Richmond Terminal Corporation. At pages 100 and 101 of his report Dr. Edwards allocates to demurrage costs 7.10 cents per ton of non-variable overhead, and 9.17 cents per ton for 30 days of the variable overhead costs, and, as we will show by Mr. Engel when he takes the stand after you, the average cost of overhead of the Parr-Richmond Terminal Corporation for the period 1935 to 1939 ranged from 18.48 cents to 25.92 cents per ton. In relation to that cost of the Parr Terminal do you consider the allocations Dr. Edwards sets up in this report of his as a reasonable or an equitable allocation?

A. I would think they would be too high.

Mr. Graham: You mean too high based upon a statement such as this Exhibit 133, Mr. Parr?

The Witness: Yes.

By Mr. Read:

{fol.1624} Q. Is it or is not your opinion as a terminal operator and through your dealings with the patrons of the terminal that with respect to the commodities in which you are actually interested, because I understand many of the commodities for which storage rates are published are not handled over the Parr Terminal, that while some of these particular commodities might stand some increase and such increase appear justifiable because of the value of the commodity, nevertheless the present rates being charged are nearly all that the traffic will bear?

A. That is my opinion, yes.

Q. Have you had any experience, Mr. Parr, in attempting to bring additional storage or demurrage to your terminal where those with whom you have been negotiating have made known to you low rentals on what we might term old buildings in the vicinity of Richmond which would give them a lower floor space cost?

A. Yes.

Q. Will you tell us something about that, please?

A. Well, I think of two off-hand: One is Felice & Perelli Canning Company that is storing in an uptown building, hauling their goods uptown and hauling them back instead



of storing in our building; another is the California Spray Chemical Company, which is storing uptown and hauling the goods down to our dock for shipment.

[fol:1625] Q. Have any of these people with whom you have negotiated ever made mention of possible difficulty through labor disturbances on the dock should they have their goods in storage there?

A. Yes. Felice & Perelli did.

Q. That is to say, that if they had goods on the dock that should there be a tie-up because of maritime labor trouble, these people also would be tied up for the duration of that labor disturbance?

A. Yes.

Q. As I understand it, Mr. Parr, the commodities that the Parr-Richmond Terminal are really interested in are petroleum products, canned goods, insecticides, slate granules and steel sheets?

A. That's correct. There might be one or two other items as time goes along, but those are the major items with which we are concerned.

Q. And is it your wish because of the circumstances that attend the operations at the Parr-Richmond Terminal that you would like to have the Commission consider very carefully the harm that might result by increasing the rates on these commodities?

A. We are very anxious that we get special consideration for those items. We have practically a 70 per cent vacancy in our docks, and if we can maintain these commodities and [fol:1626] do no injury to anyone else we would like to do it.

Q. And as to the other commodities that are involved or may be involved, you are quite willing that the other respondents here introduce testimony which will enable the Commission to make a proper finding as to rates on those commodities?

A. Yes.

Mr. Read: That is all.

By Mr. Graham:

Q. Mr. Parr, on Schedule 6, year 1939, under "Operating Expenses" and "Terminal Overhead" you don't show any rent or lease money paid for these facilities at all?

A. That's correct.

Q. It is a fact, is it not, that the premises on which you operate, with the exception of half of Terminal No. 3, are all owned by the City of Richmond?

A. Yes.

Q. That as to the half of No. 3 you have a contract with the City of Richmond by which they are purchasing that half?

A. They are paying for it out of the earnings.

Q. Yes. So that when you get through with this contract of purchase you won't own any facilities there at all?

A. We will own the south half of Terminal No. 3.

Q. I thought the City of Richmond were purchasing it.

A. The City of Richmond is paying for it, but the facility [fol. 1627] will be our property.

Q. In other words, you put up the money to build the south half of Pier No. 3?

A. That's right.

Q. And you are operating Pier No. 3?

A. That's right.

Q. Both the south and the north half?

A. That's right.

Q. And under this contract the City of Richmond is paying you back for the money you have put into it, and when they get through paying you back you will own the facility?

A. That's correct.

Q. Do I understand correctly that you do not pay any rent, or any lease money or any other sums for the use or occupancy or operation of any of those facilities?

A. The City gets one-half and we get one-half of the net profits from the operation of the other facilities.

Mr. Read: May I interrupt just a minute? I think I will clear it for you, Mr. Graham.

By Mr. Read:

Q. In other words, the division of profits to the City of Richmond is the consideration that would correspond to a definite amount stipulated to be paid for the lease of the properties?

A. That's right. When we went to the City of Richmond [fol. 1628] we had to assume all obligations for operating the property. If we made any money we get half and they get half. If we make nothing the loss is ours.

By Mr. Graham:

Q. And, consequently, you, not owning any of those properties, don't take any depreciation on any of them at all.

A. No.

Q. And you don't account in your own accounting records for any of the items of expense which would properly be accounted for by a terminal owner?

A. Except other public bodies that eliminate certain items because they are public bodies, such as being tax free and so forth.

Q. I don't think you understand my question. As an owner of a facility you would have to set up in your account certain charges such as depreciation and such as taxes and such as maintenance and those sorts of things which an owner has to pay out. Some of those are reflected in your statement as an operator of a facility?

A. No. The point I made was, Mr. Graham, that there are no taxes on some owners of dock facilities.

Q. I was coming to that next. So that in order to get to a proper appreciation of the problem of the costs of operation of those particular facilities up there one would have to have, in addition to these Exhibits 133 and 134, information [fol. 1629] from the City which was similar to that supplied by private owners of facilities?

A. Of course, the question is where you stop including costs. Do you include dredging?

Q. No, no. I understand that. But you answer my question first. You would have to have in order to get a proper appreciation of this problem the records of the owner, which in this case happens to be the City of Richmond.

A. I suppose it would be the same as the Harbor Board in San Francisco.

Q. Yes. On this Exhibit, Schedule 6 and Schedule 7, 1939, the last figure on the bottom of the page of Exhibit 133 for the year 1939 is "Parr-Richmond Terminal Corporation \$68,115.47." I take it that must be net profit before deduction of taxes which accrues to Parr-Richmond Terminal Corporation to be split fifty-fifty with the City of Richmond?

A. No. The City of Richmond gets the \$33,000, the Parr-Richmond Terminal \$68,000, but we have to take care of all of our overhead expense out of our \$68,000.

Q. Well, then, the figures \$68,115.47 less \$39,000, which gives you \$28,895, is not split with anybody then?

A. That would come to us, that net.

Q. Then, as a matter of fact, the City of Richmond does [fol. 1630] not receive half of your net profit?

A. If you will notice the next-to-the-bottom line you will see \$15,536.77.

Q. Let us go to the totals. The totals are easier to work on. \$33,063.02—

A. (Interrupting:) Mr. Graham, you can hardly work on totals because the conditions are different at the different terminals.

Q. I see. All right.

A. At the first column, No. 1 and No. 2 are divided fifty-fifty between the City and ourselves.

Q. That is right.

A. And Terminal No. 3, the north half being owned by the City on which there is a fifty-fifty split, the south half being owned by us, in which there is no division for accounting purposes, we allow one-quarter to the City and three-quarters for ourselves. That's why the difference there.

Q. I see.

A. On Item No. 4, the division is 25 to the City and 75 to us.

Q. So that it isn't entirely correct to say that you have an arrangement with the City of Richmond for a fifty-fifty split of the profits? Your most recent testimony more nearly describes what your arrangement is?

[fol. 1631] A. That's correct.

By Mr. Read:

Q. Before you go on, you said, Mr. Parr, that this allowance of division of property to the City of Richmond did not contemplate a deduction for terminal overhead, that you had to assume that out of the \$68,000?

A. Yes.

Q. What is the entry fourth from the bottom in "Total?" \$39,220.35 for terminal overhead that has been deducted from the gross profit?

A. That is terminal overhead. We have bond interest and general taxes and other expenses that are deducted from this \$68,000.

By Mr. Graham:

Q. That is right. So that this figure \$68,115.47, is your net profit for the operation of these facilities less taxes which you pay?

A. Taxes and interest we pay on our bond issue.

Q. Which is not in this statement either?

A. No.

Q. That is right. You haven't any idea, I don't suppose, what depreciation the City of Richmond takes on these facilities which you operate?

A. None, because they are paid for through a bond issue which, in turn, has been paid for or is being paid off and [fols. 1632-1728] no depreciation is taken by the City on these facilities, so far as I know.

Q. Have you any idea of what the yearly amortization is on those bonds?

A. The bond issue was \$670,000, as I recall it; the last bond issue. And I am not certain as to the number of years it runs.

Q. May I ask you, Do you know whether the public records of the City of Richmond will reflect the cost to the City of Richmond of these facilities; that is, their annual costs?

A. I doubt it.

[fol. 1729] B. C. ALLIN resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

Q. Colonel Allin, have you your note papers there in connection with the application of the Edwards formula to your wharf storage and demurrage charges?

[fol. 1730] A. Yes, I have.

Q. Would you turn to Schedule A, please, the formula is filled out. At line 18 you show "Return on structures and facilities, \$74,909.39."

Mr. Graham: What page is that?

Mr. Scoll: Schedule A, Sheet 1, Line 18.

A. I might say, we base that on 6 per cent, but that is not what the bonds carry. I would say that  $4\frac{1}{4}$  per cent is what is actually returned on the bonds, the interest.

By Mr. Scoll:

Q. No. What I want to know is what percentage of return represents \$74,909.39? What per cent does that represent?

A. That is based on 6 per cent.

Q. Six per cent?

A. But I am saying that although we based it on that, the actual interest on our bonds would average  $4\frac{1}{4}$ .

Q. But you used 6 per cent to arrive at that figure?

A. That is right.

Q. And turning to Line 22, what per cent did you use to arrive at the figure of \$2,400.00?

A. The same.

Q. Six per cent?

A. Yes.

Q. Will you turn over to Schedule B, Sheet 3, Line 91? [fol. 1731] In the first column is the figure 345,650. Now, what does that represent?

A. It represents the total square feet in the wharf sheds.

Q. That would be—

A. (Interrupting:) Wharves 3 to 8, inclusive.

Q. 3 to 8, inclusive?

A. Yes.

Q. When you say, "Wharves 3 to 8" you mean the structures that are shown on Exhibit 139 as Transit Sheds 3 through 8?

A. Yes, and also No. 1. I omitted that one there.

Q. 1, 3, 4, 5, 6, 7, and 8, is that correct?

A. Yes, sir.

Q. You didn't include Warehouse A?

A. No.

Q. And that represents the total floor space in those sheds?

A. That's correct.

Q. And looking at Column (b), the wharf demurrage column on Schedule B, Sheet 3, the figure of 34,565 is shown. That represents, does it, the annual average of floor space occupied?

A. That was the actual floor space used in that particular accounting period.

Q. As an annual average?

A. No. It wasn't an annual average. It is an actual [fol. 1732] figure. In other words, I believe I explained



that that is put in to use for wharf demurrage at our busy season, so it simply takes out of circulation for practical purposes, that much transit shed space for the entire year and it is the actual figure of square feet used in wharf demurrage.

Mr. Graham: That only covers four months, I think you testified?

The Witness: Four months, which is our busy season.

By Mr. Scoll:

Q. And it is floor space that was occupied by cargo?

A. Yes, sir.

Q. So that it doesn't take into account any aisle space or waste space?

A. No.

Q. And if you apply the Edwards formula you have to add 40 per cent to cover aisle and waste space?

A. Yes, sir. And in that connection I would like to answer the question on which we adjourned yesterday to the effect that on Sheet 2 of Schedule E, Column (m), has that additional amount put in a second time. I shouldn't say "a second time", but it has been increased on account of the 60 per cent factor.

Q. Well now, will you turn to Schedule B, Sheet 1, Line 91? There you have the total carrying charges in Column (e) of \$141,393.44 and you go over to the Column (h), wharf [fol. 1733] demurrage column, and you find the amount of \$19,173.05. That represents, does it, the amount of carrying charges that are assigned to wharf demurrage?

A. Yes, sir.

Q. That figure \$19,173.05 is 20 per cent of the total figure in column (e), is that correct?

A. Yes, sir.

Q. What is the reason for assigning 20 per cent of the carrying charges to wharf demurrage while you only charged 10 per cent of the space to wharf demurrage, as shown at line 91 of Schedule B, Sheet 3?

Mr. Townsend: Pardon me, just a moment, Mr. Scoll. I don't think that is 20 per cent. That doesn't figure out right.

Mr. Scoll: We can correct that very easily enough.

By Mr. Scoll:

Q. If you compare the figures in line 4 of Sheet 1 of Schedule B you will find that the amount of \$19,148.05, under wharf demurrage, column (h), is 20 per cent of \$95,740.23 in column (c), the total expenses.

A. That comes from 20 per cent of the figure of \$95,740.23.

Q. Yes, I know that. What I asked you was the explanation for the difference in treatment? You have treated [fol. 1734] your carrying charges as 20 per cent charged to wharf demurrage and when you come to assigning the charging of space you charge only 10 per cent.

A. Because that was what was actually used. Now, it may be that that complicates the computation, but that is what we actually did.

Q. Did you finish your answer, Colonel Allin?

A. Yes, sir. In other words, we followed the rules in this distribution in Schedule B, but when we got over here into Schedule E, we actually put down the exact percentage of floor area used.

Q. Yes. But if you are only using 10 per cent of the space how can you allocate 20 per cent of the carrying charges?

A. Well, Dr. Edwards said to put it down. That is all I know about it.

Q. In other words, Colonel Allin, what you have done is depart from the formula?

A. That's correct, on Schedule E.

Q. Yes.

A. To the extent of putting down the exact floor space used.

Q. Well, if you follow the Edwards formula on Schedule B and allocate 20 per cent of your carrying charges to wharf demurrage, I can't see why you have to depart from the [fol. 1735] formula when you get to Schedule E and charge only 10 per cent, or Schedule B, Sheet 3, and charge only 10 per cent of your space to wharf demurrage. It seems to me that you have been inconsistent there.

A. I expect we have been. I might say that we have endeavored to fill out these figures. Of course, it is a little difficult to do unless we are in consultation with someone who is familiar with it. But in presenting these figures I would like to make a statement regarding our feeling on this matter as a matter of policy.

Q. Go ahead. Is it a long statement?

A. No, not very long.

We wish to say that this procedure is establishing a precedent and our feeling is that every effort should be made to base any order of the Commission on sound principles which may be more or less universally acceptable and not be based primarily upon certain traffic customs which apply in a small area, such as San Francisco Bay. Furthermore, it is our feeling in approaching the regulation charges of wharves in an effort to stabilize these charges every effort should be made to remove inequalities and, in so far as possible, place all the wharves on the same basis. The Edwards formula has been carefully worked out and is a thorough and conscientious effort to arrive at certain results but it appears to desire those results to conform to [fol. 1736] local practice rather than to approach the situation from what may eventually become a matter of national policy.

It is our feeling that a wharf is an instrument designed to both the service of land and water carriers and we are unable to subscribe to the theory as outlined in this report, that the cost of the wharf terminal should be borne 50 per cent by the water carrier and 50 per cent by the cargo and absolutely nothing by the land carrier. The wharf terminal is of just as much use to the rail or truck industry as it is to the water carrier, and the need of a transit shed is solely due to the difference of the size of the carrier units as between a railroad car and a steamship. As a matter of fact, the railroads recognize this and in many of the older ports, particularly in the east, the railroads have provided and operate large wharf terminals on which they make little or no charges for transit freight moving between their own rail lines and the steamships. In some cases nominal charges are made by the railroads owning the terminal, but in general they have conceded that they are a necessary adjunct to their business and they have furnished the facilities. For this reason we wish to protest against any order being made applicable locally which will not take into consideration the discrimination which will be effected if water carriers and shippers divide the expense of a terminal and the land carriers, such as rail and trucks are assessed nothing. [fol. 1737] Furthermore, the matter is already complicated locally by the fact that the rail carriers are already paying Howard Terminal, Encinal Terminals and the Port

of Oakland ten cents per ton on rail traffic handled over these terminals, which payment they decline to make elsewhere. It is true that this payment is predicated on certain service being performed, such as checking the cargo, but this service, of course, is necessary in any event and would not require any payment by the railroads and, as a matter of fact, the identical service is performed by the Port of Stockton, but the payment is denied at Stockton. As far as we can determine, this—

Mr. Geary: (Interrupting) Let me break into your statement. You don't anticipate that this Commission can do anything with respect to the railroad companies to correct that situation, do you?

Mr. Townsend: Just a moment. I think we are entitled to have the Colonel state his views about this formula, and it takes into consideration everything and I think he ought to be permitted to go ahead and complete it. You can cross-examine him.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: Go ahead, Colonel Allin.

[fol. 1738] A. (Continuing:) As far as we can determine, this payment by the railroads is simply a contribution to the cost of operating the terminal the same as is paid by a steamer under the heading of "Dockage". The matter is further complicated locally by the fact that southern California ports are already assessing a similar charge of ten cents against the truck carriers but have not put it into effect as yet against the rail lines.

Furthermore, the San Francisco Bay ports have all been in favor of putting this charge in against the railroads, and if desired to put this charge into effect against trucks—

Mr. Townsend: (Interrupting:) I think you mis-stated yourself.

The Witness: Yes. The San Francisco Bay ports have been in favor of putting this charge in against the railroads and desired to put it into effect on July 1st. We objected and still object to this charge being made against the trucks unless it is made likewise against the rails in

order that all carriers using the terminal may pay a proper expense of operating the terminal.

It is true that the matter of exacting a charge against the rails is somewhat complicated by ownership and operating agreements, but the mere fact that there is a complication there does not seem justification for ignoring this basic factor in the setting up of charges for the use of a terminal. [fol. 1739] All of these factors, we believe, should be cleared up definitely and finally or taken into consideration and allowed for when any study is accepted by the United States Maritime Commission as a basis for fixing rates to be charged by the terminals in this area. It has been argued at times that in the final analysis the entire cost is borne by the cargo—

Examiner Basham: (Interrupting:) Colonel Allin, I think it would be better to put that in the brief. I don't think we are developing any facts now. It sounds purely argumentative to me.

The Witness: Simply, Mr. Examiner, the fact that certain of these charges are paid for by the rails at certain terminals and in setting up this formula it is our feeling that the entire situation should be studied by the Commission, including both the trucks and the rails. And for that reason we feel that this study to that extent is incomplete.

By Mr. Scoll:

Q. Well, undoubtedly you will make your argument—you will complete your statement when you come to filing a brief, I presume, Colonel Allin?

A. Undoubtedly, yes.

Q. Going back to Schedule F for a minute again, Schedule E, Sheet 1, Line 32, Column (o), which is the last column, [fol. 1740] the amount shown there is .0165. I take it that that rent represents  $33\frac{1}{3}$  per cent of the variable overheads assigned to wharf demurrage instead of 50 per cent as the formula provides, is that correct?

A. Just a minute.

Q. In other words, that is  $33\frac{1}{3}$  per cent of the 50 per cent?

A. Yes, that is correct.

Q. Which the formula allocates?

A. Yes, sir.



Q. Have you explained why you have used the smaller figure? In other words, you have used the figure which is  $\frac{1}{3}$  of that which the Edwards formula provides for?

A. Well, the intention of that was to base it on the four months' use being, in effect, a twelve months' use.

Q. Well, now, I understand the substance of your testimony concerning this seasonal aspect of the operation. The bulk of your storage is during the four months, as you say.

A. Yes.

Q. Well now, you do have storage at other times of the year, don't you?

A. Oh, very little; very little. We do not encourage the storage on our transit sheds. We don't believe it belongs there.

Q. Well, now, but you actually receive cargo at those [fol. 1741] sheds through the year, don't you?

A. Oh, yes; continually.

Q. Turn over to Sheet 2 of Schedule E. Line 43 shows 6,175 tons of cargo received on wharf demurrage.

A. Yes.

Q. Did you make any test check to find when during the year which you used that cargo was received?

A. Yes, that was checked. I don't have the exact dates that the cargo was there, but that was checked.

Q. You don't recall off-hand whether you made a monthly check to find out how much you had on storage in January and how much in February and so on through the year?

A. It was done more, I would say, from the standpoint of the accounts. In other words, the blocks of storage and checking to see what months they were there, because this wharf demurrage was not spread among a tremendously large number of shippers.

Q. Can you tell me from your notes then just how that figure of 6,175 was made up?

A. I don't think I can tell you the exact date.

Q. How was it made up?

A. It was made up of a number of different shippers. We don't have the dates here.

Q. Well, what records did you use to make that up with?

A. The records of the storage accounts or the wharf demurrage [fol. 1742] accounts. I will explain: They were the accounts of certain shippers and we go right to those



shippers and check those records and determine how long those goods were on our wharf.

Q. And while you were checking it over and determining what period of a year the cargo was on, didn't you check off to find out how much during these periods you were checking?

A. We studied the whole thing. We listed the commodities and we found that it was—that four months was a reasonable figure for the length of time that these goods were there.

Q. Let us take line 44, total ton-months of storage, 24,700. How is that worked out?

A. Simply by multiplying the four months by the tons.

Q. What you really did was to take four months as the arbitrary period in which you figured most of your storage occurred, didn't you, and just apply that throughout the formula?

A. Well, in this particular case, yes. But we multiplied—we used four months in changing that figure for the simple reason that four months was what we found to be the average length of storage of those tons of freight.

Mr. Townsend: In other words, Colonel Allin, the reason for that was that after the examination of your records you concluded that you would have to get back your wharf de-[fol. 1743] murrage cost over a period of four months instead of spread out over a period of a year?

The Witness: Yes.

Mr. Graham: He said an average four months. An average four months.

The Witness: No. You see, these accounts are not all withdrawn at once.

Mr. Graham: That is right.

The Witness: So that you strike an average of four months.

Mr. Graham: That is what I meant. That, of course, is a whole lot different than four months. You might have some accounts that will run two months, you might have some accounts that will run six months, and you might have some accounts that will run one month and another that might run eight months.

The Witness: But four months is the average figure.

Mr. Graham: You might have an account that would run one month and another account that would run eight months?

The Witness: That is possible.

By Mr. Scoll:

Q. So that that storage is actually spread over the year, isn't it, bunched in four months of the year, the same four [fol. 1744] months?

A. It is not confined to four months but from a practical standpoint it is.

Q. Keeping one finger on Schedule E for a moment, that figure of 6,175 tons, will you turn over to the summary schedule, line 12? Your total annual revenues in column (e) is shown as \$15,935.80. Your total tons, as we have seen, were 6,175. That means that the average revenue ton was about \$2.50 for the year; and taking column (c), \$34,441.72, divide that by 6,175, and it gives an average cost per ton of \$5.75 approximately. Is that the approximately correct relationship between your revenues and expenses per ton, \$2.50 a ton revenue and \$5.75 a ton expenses for storage?

A. In other words, do you mean that does it cost us approximately twice what we get for it?

Q. No—yes. And do you also take in \$2.50 and pay out \$5.75?

A. Well, we think it is too low. Just how much it should be raised—we don't think it is dependent on this calculation because this calculation comes from the formula. It is our feeling that it should be a penalty against storage that is placed on the wharf.

Q. Yes.

A. But not necessarily based on our costs alone.

Q. But \$2.50 represents your revenue and \$5.75 represents [fol. 1745] your cost per ton?

A. That's—

Mr. Townsend: (Interrupting:) Based on this formula.

A. (Continuing:) That is the way it would come out based on Dr. Edwards' formula.

By Mr. Scoll:

Q. As you have applied it?

A. Yes, sir; as we have applied it.

Q. When you say you think the charge should be a penalty charge you mean it should be something in excess of the costs as shown in this schedule as you filled it out?

A. I don't say that this schedule is correct. In fact, we think it is not correct for the reasons aforementioned, but we feel there should be a penalty sufficient to discourage storage in the transit sheds because we feel that the transit shed should be used for the transfer of transit freight from the land carrier to the water carrier and not for storage.

Q. Will you turn to line 46 of Sheet 2, Schedule E, the average cost of high-piling being shown as .1843 per ton on 4,225 tons. Will you explain what test you used to develop the number of tons high-piled, 4,225?

A. Well, we just followed the rule here.

Q. Did you actually have records of the number of tons [fol. 1746] that were high-piled?

A. Yes, from actual records.

Mr. Graham: You didn't follow the rule, then?

The Witness: No, we did not follow the rule.

By Mr. Scoll:

Q. Do you use hand or machine labor in high-piling, Colonel Allin?

A. Machine labor.

Q. What was the method that you used to arrive at the high-piling cost of .1843?

A. From our records of our high-piling. High-piling is all covered by work orders. It is just a case of adding them together.

Q. Don't you actually use a lot of hand labor as well as machine labor in high-piling?

The Witness: How is that?

Mr. Scoll: Will you repeat it to him?

(The question referred to was read by the reporter.)

A. Yes, we do.

Mr. Scoll: Thank you. That is all.

Cross-examination.

By Mr. Geary:

Q. Colonel Allin, just referring to that last series of questions that were asked of you by Mr. Scoll, I wonder if you

would give for the record an explanation of a typical operation [fol. 1747] tion that is conducted on the Stockton Terminal where high-piling is involved?

A. Well, the goods; we will say, for example, would come in by truck and they would be unloaded and the lumpers who work with the trucks would do the high-piling.

Q. In other words, it is a continuous operation right from the bed of the truck up into the high pile?

A. In that case, and the high-piling portion of the cost would be borne by the Port. And then on the breaking-down, similarly, it would apply with the stevedore costs being borne by the Port.

Q. This figure of 18 cents per ton as the average cost of high-piling, as appears on Schedule E, Sheet 2, covers both high-piling and breaking down?

A. Yes.

Q. And have you ever had any occasion to check the actual cost of the operation which would be conducted aside from this method you have just described where the goods are high-piled direct from the bed of the truck?

A. No, we haven't.

Q. Have you had any occasion to check the difference between the cost of high-piling inbound as compared with outbound?

A. No. Our movement is practically confined to outbound.

Q. Outbound?

[fol. 1748] A. Yes, sir.

Q. With respect to the demurrage charge itself, what is your position with respect to that? On what basis do you think that it should be prescribed by the Maritime Commission?

Mr. Scoll: He has already said that, Mr. Geary.

Mr. Geary: I don't believe he has. If I may get it in a figure of so many cents per ton for a certain period and for how long a period and then what follows before that cargo moves into storage, I want it.

Mr. Townsend: I object to that as argumentative. I think that is something for the brief again.

Mr. Graham: He can ask him what he thinks the rate should be.

Mr. Townsend: I think that is a matter for the brief.

Examiner Basham: Off the record, please.

(Remarks outside the record.)

Examiner Basham: Go ahead and answer the question. Read the question to him.

(The question referred to was read by the reporter.)

A. I have never arrived at any conclusion as to the volume. I think it should be merely the principle on which I think it should be based.

By Mr. Geary:

[fol. 1749] Q. Have you reached any conclusion as to whether you think it ought to be on a period basis or on a day basis?

A. No.

Q. You have no views one way or the other on that particular subject?

A. No.

Q. Has your experience at Stockton indicated what would be the result of cargo in storage or on wharf demurrage if a period basis were used in comparison with a per diem basis?

A. Well, the thing is quite complicated, Mr. Geary, and I don't think I could answer that. There are so many competitive factors that enter into it that make it rather difficult to analyze.

Q. Well, let me put it this way: Entirely aside from the competition, if you have the opportunity of acting as a free agent, competition being eliminated, would you be in favor of demurrage on a period basis or on a per diem basis?

A. I wouldn't be in favor of demurrage at all on the wharf.

Q. You would not?

A. No. The wharf is designed to handle transit freight.

Q. In other words, you would figure that the charge after the expiration of the free time should be such as to immediately remove that cargo off the dock?

A. To encourage its removal, yes.

Mr. Graham: Then you would put it in that back warehouse A?

The Witness: Or uptown in some other warehouse, yes, or let somebody else put it there.

Mr. Geary: That is all.

By Mr. Graham:

Q. Colonel Allin, some of these questions may have been asked before, but I just want to get it straight in my own mind. As I understand your testimony, with respect to the time that the cargo remains on wharf demurrage it is an average of four months a year, but the fact is that during every month of the year you have some cargo on your facilities, either under wharf demurrage or storage?

A. That may be technically correct, Mr. Graham, but from a practical standpoint—

Q. (Interrupting:) There isn't anything "technical" about this at all. Do you or do you not have cargo during every month of the year on your facilities carried under wharf demurrage or storage?

A. Well, then, I can't answer you, then, because I don't know. I would have to check our records to tell you whether every moment of the year there is freight there.

Q. In other words, you can't tell me that every month of [fol. 1751] the year you have some cargo, irrespective of what it is?

A. On wharf demurrage?

Q. Yes. I don't care about the amount.

A. Well, it is probably a safe answer to say that we may have a very small amount.

Q. That is all I want.

A. But I should say, again, that our demurrage is confined to outbound cargo, which is largely seasonal.

Q. That is right. This report, as I understand you, was made up on the basis of a four months operation?

A. Just in so far as certain figures were concerned, which have been mentioned. Otherwise we followed the rules.

Q. Among other things on which you have made up this report based upon a four months period are those covered by Schedule E, Sheet 1, General and Administrative Expenses. I think you testified to that already.

Mr. Townsend: Which column are you talking about?

Mr. Graham: Well, all of them.

Mr. Townsend: What do you mean? I don't think your question is clear.

By Mr. Graham:

Q. Colonel, did you get my question?

A. Yes.



Q. That is a fact, is it not?

A. Yes.

[fol. 1752] Q. How about traffic expenses right above? Have you used the same four months formula for that?

A. No. Those are not based on the four months.

Mr. Townsend: May I try to clear up a point?

Mr. Graham: I am not having any difficulty.

Mr. Townsend: Yes, you are.

Mr. Graham: I think we understand each other thoroughly. I would like to be able to continue my cross examination.

Mr. Townsend: All right. Go ahead and get it all balled up!

Examiner Basham: Go ahead.

By Mr. Graham:

Q. Go up a little further on the same page as to the dock operation, are the figures which you used in this report on dock operation also based on a four months period?

Mr. Townsend: I object to that question unless he specifies what figures, which column he is talking to. Now, there are many columns of figures under "Dock operation", and let us have your question pinned down to a specific column.

Mr. Graham: That will be very easy. We will be here all night if you want to do it that way.

Mr. Townsend: All right.

A. May I say that the figures in column (c) are annual [fol. 1753] figures, and if you are wishing to inquire regarding column (o) they have all been increased on the basis of the four months ratio that we previously mentioned.

By Mr. Graham:

Q. They have all been reduced?

Mr. Burgin: Increased.

A. Increased.

By Mr. Graham:

Q. All right. In other words, when you get down to column (o) the figures for dock operation and general and ad-

ministrative expenses are all calculated on a four-months period?

A. That is correct.

Q. And general and administrative goes over to the second page of the same schedule?

A. Yes.

Q. That is right?

A. Yes, it is all the same.

Q. I think you testified also that you made up this report having in mind only the interstate commerce as distinguished from intrastate commerce and not having in mind all of the traffic that moves over the facility?

A. This covers all the traffic over our wharves with the exception of pipeline movements, which would have simply complicated the study. All of the cargo which moved over those wharves was interstate commerce.

[fol. 1754] Q. You have merely excluded pipeline tonnage?

A. That's correct.

Q. And there has been no other tonnage, then, excluded from this report which moved over your facility?

A. None.

Q. And, as I understand it, this report does not cover any facilities except the transit sheds?

A. That's all.

Mr. Graham: I think that is all.

By Mr. Read:

Q. Colonel Allin, I understand that you have expanded these figures by a multiplication of four upon the theory that four months constitutes the season of storage?

A. By three.

Q. Four.

A. We multiplied by three.

Q. And the reason that you have assigned a full year's allotment of the charges there is because that particular area is not used for any other purpose?

A. Yes. In other words, our movement largely being out-bound is seasonal, and if those goods take up that much of the transit shed during our peak business it simply defeats the use of the transit shed for the entire year to that extent.

Q. If goods only remain on the transit shed four months [fol. 1755] and they are then removed how does it deprive

you of the use of the transit shed for the other eight months?

A. Because we don't have any other use to put it to. In other words, it may be possibly true that there are certain Bay terminals who have a large movement of inbound business coming in and it is distributed from your wharves over the entire year. We don't have that and our business is outbound, food products from the interior valleys and unless we can make use of our wharf at this particular time we don't get any use of it at all for the purpose for which it was built.

Q. I thought you testified previously that you didn't permit any storage on your transit sheds?

A. Well, we do. We discourage it. We do. We have to on account of competitive conditions.

Q. Is the storage in the transit shed, or is it in Shed A?

A. We have wharf demurrage in our transit sheds to the extent of the figure which is shown in here: 6,175 tons. That was there an average length of four months.

Q. Four months?

A. Yes.

Q. And then for another average of eight months the space was unoccupied?

A. That's it.

Q. How about this Shed A? Is that used for demurrage [fol. 1756] cargo also?

A. Shed A—Shed A is used for cargo which comes in there ex-steamer and which the owner desires stored, small lots.

Q. Is that handled from the ship's tackle right into the Shed A?

A. No, it is not.

Q. It is placed at rest in the transit shed first?

A. Yes.

Q. And thence removed to Shed A?

A. That is correct.

Q. And that service is performed by whom?

A. Oh, by the owner of the goods, or by ourselves, as the case might be.

Q. When you perform it do you make a charge?

A. We make a charge.

Q. Referring again to the last page of Exhibit 137, where you show at line 45, 4,225 tons high-piled, did that consti-

tute the entire weight of all the goods or was it just the weight of the goods that were actually high-piled?

A. Just the goods that were actually high-piled.

Q. In other words, it did not apply from the floor to the top of the pile?

A. No.

Mr. Read: That is all.

By Mr. Geary:

[fol. 1757] Q. Was that 4,225 tons actually high-piled in the transit shed?

A. Oh, yes.

Q. And not in Warehouse A?

A. This entire report covers the transit sheds.

Mr. Geary: That is all.

Examiner Basham: Any further questions of Colonel Allin? He wants to get away as soon as possible. (No response.)

You are excused, Colonel Allin.

(Witness excused.)

Examiner Basham: We will adjourn now until two o'clock.

(Whereupon, at 12:35 p. m. a recess was taken until 2:00 p. m.)

[fol. 1758].

Afternoon Session

2:00 p. m.

Examiner Basham: Come to order, please.

Mr. Scoll: Mr. Examiner, I have received a document entitled "Tariff Charges, Board of Harbor Commissioners, State of California, for San Francisco Harbor, No. 2, Amended to October 9, 1940". I offer this as a supplement to Exhibit 64, the original tariff, and suggest that it be numbered "64-A".

Examiner Basham: It will be so received.

(The Tariff referred to was marked "Commission's Exhibit No. 64-A", and received in evidence.)

Mr. Scoll: I also have a document entitled "Encinal Terminals' Tariff No. 1," which is a re-issue of No. 1,

brought down to date, which I offer as a supplement to the original tariff introduced as Exhibit 72 and suggest that it be numbered "72-A".

Examiner Basham: It will be so received.

(The Tariff referred to was marked "Commission's Exhibit No. 72-A", and received in evidence.)

Mr. Scoll: I also have re-issue of the Port of Oakland Tariff No. 1, bringing the Port of Oakland Tariff down to date, which is a supplement to original Exhibit No. 71, and I suggest that it be marked number "71-A".

[fol. 1759] Examiner Basham: Received.

(The Tariff referred to was marked "Commission's Exhibit 71-A", and received in evidence.)

Mr. Scoll: Let the record also show, Mr. Examiner, that I have received corrected pages to bring the Parr-Richmond Terminal Corporation Tariff No. 2 down to date. Parr-Richmond Tariff is now in the record as Exhibit 77, and these corrected pages will be inserted in the original tariff. That leaves yet to be received tariffs from Stockton and Howard to bring their tariffs down to date.

Mr. Graham: We will bring ours in the morning.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

Mr. Scoll: Counsel for Howard and Stockton have advised me that pages to bring their tariffs down to date will be furnished for the record, and I suggest that, Mr. Examiner, you consent to having those tariffs or supplemental pages inserted in the record after the close of the hearing, and that they be incorporated in the record with the same number as the other exhibit.

Now, let us see what that is for Howard Terminal. Howard Terminal Tariffs are in the record now as Exhibits [fol. 1760] 74, 75 and 76. So the amendatory tariffs or pages will be inserted as a supplement to those exhibits, and the Port of Stockton is now Exhibit No. 69. I presume the supplements should be inserted as supplements to Exhibit 69.

Mr. Ventre, please.

JOHN P. VENTRE resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

Q. You have been previously sworn, Mr. Ventre?

A. I have.

Q. Have you a copy of Exhibit No. 130 in front of you? That is the determination of wharf demurrage cost of Howard Terminal based on the Edwards formula?

A. I have.

Q. That was prepared by the Howard Terminal, was it not?

A. It was.

Q. From the records, books and documents of the Howard Terminal?

A. That's right.

Q. In preparing that did you follow the Edwards formula throughout, making the same allocations and assignments that are made in the Edwards formula?

A. We used the same basis throughout that is used in either actual or the percentages that were given to us by Dr. Edwards' work sheets with one exception, and that [fol. 1761] was with relation to tractors, trailers and piling machines and the skids used in high-piling.

Q. Where is that item on the formula, Exhibit 130?

A. It will be a scattered figure. It is taken into consideration in depreciation, in maintenance and equipment.

Q. That appears on Schedule B, Sheet 2, does it not?

A. It does; yes, sir, although it can't be identified as any one particular figure. If I explain the change that we made it will probably give you the answer.

Q. Do so, please.

A. Dr. Edwards in his study allocated 10 per cent of the tractors, trailers and piling machines to high-piling. We allocated 25 per cent. And on the skids which are used in high-piling he allocated 25 per cent and we increased that to 50 per cent. That was due to a difference in our methods of handling whereby at the time the study was made by Dr. Edwards we only had one piling machine. Now we have three, and a good deal of the canned goods were high piled



by hand whereas now we pile practically no canned goods by hand. We use machines entirely.

Q. So that those adjustments upward are based on increased use of machinery?

A. Increased use, that's right. There is one other correction I guess I should mention, and that is our labor cost [fol. 1762] is based on the actual cost for the period November 1, 1938 to October 31, 1939, and it was then adjusted upward to take into consideration the increases granted warehouse labor in October, 1939.

Q. The year's operations which you used in compiling Exhibit 130 were from November 1, 1938 to October 1, 1939, is that correct?

A. To October 31st.

Q. Why did you use that basis?

A. Well, at the time of the adjourned hearing here we understood that that would be the desirable period to study inasmuch as that was one complete year of business without interference from strikes and closing of the plant. The last two months of '39 we were closed by strike and we couldn't give a complete year.

Q. Mr. Ventre, will you turn to sheet 3 of Schedule B?

A. Yes, sir.

Q. Line 91 under column (h), wharf demurrage, you have 55,322 feet. In the summary of the information contained in Exhibit 130, which was introduced in the record as Exhibit 131, the space used is indicated as 59,986 feet. How are those two figures to be reconciled?

A. The 55,322 feet is the space of the sheds which are used for the wharf demurrage cargo. To that we added 664 feet to cover space occupied by office and machine shops, [fol. 1763] etc., for the proportion as allotted by Dr. Edwards, which is around 8 per cent.

Q. Will you turn now to sheet 2 of Schedule E, column (m)?

A. Yes, sir.

Q. Do you have that?

A. Yes, sir.

Q. In column (m) the adjusted space cost per square foot for 30 days is shown as .0319 cents. Do you find that?

A. Yes, sir.

Q. According to the testimony of Mr. Differding at the earlier hearing the California Railroad Commission in

investigators, himself, Mr. Differding, and Dr. Edwards found that your space costs were .0355 cents per square foot. How do you explain the fact that your space costs have gone down since 1935?

A. Well, the only explanation I can give to that is at the time of Dr. Edwards' study there was different units being used for the bulk of our demurrage than those that we are using at the present. The particular unit that I consider the largest difference in was one of the units on the north part of the property where there are narrow buildings and brick construction which had a high cost of construction compared to the buildings we are now using.

Q. Will you identify the buildings which you are now using which you did not use in 1935 for wharf storage or [fol. 1764] demurrage?

A. I can't identify exactly the ones that were taken into consideration in 1935 because I don't happen to have that record here.

Mr. Scoll: Let the record show that the witness now has before him the work sheets that Dr. Edwards used and Mr. Differding, which work sheets they used in preparing their report for the California Railroad Commission.

The Witness: Particularly in Dr. Edwards' work sheet he shows buildings 3-A and -B, which in the exhibit that now stands in this record as Exhibit 105 is designated as 6-D and 6-C. Those two units are not now used in any way in connection with wharf demurrage and they are used entirely in the public warehouse business.

By Mr. Scoll:

Q. Those are higher priced units, are they?

A. They are the highest two cost units we have with the exception of 6-A and -B, which are not being used for wharf demurrage.

Q. Those two units that you say are no longer used for wharf demurrage, isn't it true that they might still be used for overflow cargo on storage?

A. Well, the warehouse section at the present time is so occupied that it is not possible at this time. It might be possible that some day that may change, although we [fol. 1765] don't anticipate it because the location of the

building lends itself more properly to the warehouse business.

Mr. Scoll: No further questions.

Cross-examination.

By Mr. Geary:

Q. What building did you use, Mr. Ventre, to get the figure of .0319 in Schedule E?

A. That comprises several units.

By Mr. Graham:

Q. Are those the units, Mr. Ventre, that you testified in the previous hearing were used for this purpose?

A. I don't believe we testified at that time as to what units were being used. We are using a portion of Unit 1-A, 1-E, 5-C, 5-D in its entirety, and a portion of 6-E.

By Mr. Townsend:

Q. Where is 1-E?

A. 1-E is in that unshaded portion adjoining 1-A.

Examiner Basham: Any further questions?

Mr. Geary: Yes, I have, Mr. Examiner, please.

By Mr. Geary:

Q. The figure on the summary schedule, Mr. Ventre, for high-piling cost of .3725, is that the figure representative of your experience in piling canned goods by machine?

A. No, it is not. That's a figure covering the average cost of piling all commodities which were high piled on [fol. 1766] either inbound or outbound movement and regardless of density or size.

Q. It represents an average figure?

A. That's correct.

Q. Would you say that your experience on the cost of high-piling inbound was different from the cost of high-piling cargo outbound?

A. My estimate of that would be that it costs from two to three times as much to pile inbound cargo as it does outbound, and particularly canned goods. I would say that our cost of piling canned goods would be in the neighborhood of 10 to 15 cents.

Q. And what is the explanation of the difference between the cost of the piling in one direction in comparison with piling in the opposite direction; that is, of the movement in the opposite direction?

A. Well, there are two outstanding differences. One of them is, when outbound cargo is delivered to the dock it is either delivered for a specific vessel or to be held for an indefinite time, which would tell you that it is for storage. And with that knowledge you have the opportunity of placing the cargo most convenient to the point where you want to pile it. And on the inbound cargo, which in the Bay area here, as far as we are concerned—rather, outbound cargo I meant to say—in the Bay area is mostly canned goods. When it is delivered by tracks it is placed [fol. 1767] on skids, as we term them, and then we use our lift machines to place them into the pile for high-piling or for lower floor. Similarly in the case of car, when it is received at the terminal by car in the car unloading operation we place it on skids and then use lift machines to high-pile it. When the car is delivered to the ship we simply take the lift machine and move the skids on to the floor, which gives it floor height, and the stevedores take it from that position.

On inbound cargo, when it comes from the vessel it is not always certain whether it is going to extend beyond the free time or not and the stevedores will only place in certain locations. They will not put it on skids, which means that you must hand pile it on to skids. And similarly, when it goes out by truck you lift it down on the skids. But on inbound cargo you must necessarily use hand labor for part of your service regardless of whether you use machines for piling it or not.

Q. You heard the testimony of Colonel Allin this morning with respect to the high-piling operation that is conducted in Stockton?

A. I did, yes.

Q. Have you any operation of that character that is available to you at your facility in Oakland where the goods [fol. 1768] are moved from the bed of the truck directly into the high pile?

A. We have never had occasion to handle it that way, and the Union regulations are that the lumpers cannot do

high-piling. We have to hire warehousemen to do high-piling.

Q. In other words, the Union regulations which affect the San Francisco Bay area would prohibit that sort of an operation down here so far as your experience goes?

A. That's right.

Q. And the net result of the situation is that it has to be taken off the bed of the truck and then by the teamsters and then entirely and completely handled by a different group of men?

A. Except that in taking it off of the truck they will put it on the skids where you want it for high-piling.

Q. But they will not put it in the high pile at all?

A. They will not put it in the high pile at all, no.

Q. That is, I mean by "they", neither the teamster nor the lumpers?

A. We have to hire the warehousemen if we want to perform that service.

Mr. Geary: That is all.

By Mr. Townsend:

Q. Mr. Ventre, referring to your Exhibit 105, you stated that you used in computing your Exhibit 130 a portion of [fol. 1769] your Unit 1-A. What portion did you use?

A. 25 per cent.

Q. 25 per cent. And why did you use only 25 per cent?

A. That was all that was required for the amount of tonnage that we had.

Q. You mean 25 per cent was the maximum amount of space that you used for wharf demurrage cargo in that area?

A. That's right.

Q. What is the square footage in the aggregate of Unit 1-A?

A. I don't think I can answer you that, but I can tell you what the 25 per cent is and you can figure it out.

Q. That is all right.

A. 25 per cent is 8,123 feet.

Q. Did you use all of your Unit 1-E or just part?

A. All of it.

Q. And what is the square footage there?

A. 4,892 feet.

Q. 4,892. And that is the part that is not dark red or as light red on your Exhibit 5, but adjoins Unit 1-D and Unit 1-A?

A. That's correct.

Q. Did you use all of Unit 5-C?

A. 50 per cent.

Q. And what is the area of the 50 per cent?

[fol. 1770] A. 50 per cent was 10,600.

Q. 10,600?

A. That's right.

Q. You say you used all of Unit 5-E. What was the area of that?

A. 21,135.

Q. And what part of Unit 6-E did you use?

A. 60 per cent.

Q. What was the area of the 60 per cent?

A. 10,572.

Q. Now, do I understand that those were the only areas that were used for wharf demurrage or wharf storage cargo during the period covered by your study?

A. To the best of our knowledge, yes.

Q. And what period were you taking into consideration in that connection?

Mr. Graham: I think he has already testified to that. It was the twelve-month period.

A. November 1, 1938 to October 31, 1939.

By Mr. Townsend:

Q. And you used that for all purposes in this study?

A. That's right.

Mr. Townsend: Mr. Examiner, when the Port of Stockton representatives were requested by Mr. Scott to develop certain information pursuant to the Edwards cost formula [fol. 1771] we were requested to fill out in the formula Schedule A to the extent that any items were allocated to Column (h), and we were also requested to fill out Column (c) of Schedule E. I notice that Encinal Terminals has similarly filled in the columns of this Exhibit, and I request that Howard Terminal submit the same information for the record. I believe it is only fair that the same information be submitted by all of the terminals and it is my



understanding that it is necessary to develop that information before the remainder of the formula can be filled in. Therefore, I wonder if we couldn't have that information made available and filled in to the formula for the Howard formula?

Mr. Scoll: I think Mr. Townsend's request is correct and reasonable. I think the information should be the same from all the terminals filled out in the Edwards report.

Mr. Graham: I might say that there was no intention of omission to fill in this. There was no understanding that we were to fill it in. I think we can get the information and supply it to you. We don't have the data for making up Schedule A that we have in making up the rest of the exhibit. We didn't have that.

The Witness: We didn't have it at all. It would mean in our properties going over 24 different units, because each [fol. 1772] unit has a different cost and they have no relation to the rest of the demurrage.

Mr. Scoll: You had to do that to get the rest of the schedule.

The Witness: Only in so far as the percentages are involved in the respective units.

Examiner Basham: You will undertake to furnish that?

Mr. Graham: We haven't any objection to furnishing it. We can't furnish it now and we couldn't furnish it within the time in which this problem was raised the other day.

The Witness: It couldn't possibly be furnished on this formula because there were 24 different units and they have no bearing on wharf demurrage.

Mr. Graham: We can get the information assembled if you want it, but we don't think it has any bearing on the case.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Townsend:

Q. Mr. Ventre, will you please turn to Sheet 1 of Schedule B of your Exhibit No. 130, and refer particularly to—

A. (Interrupting:) Just a moment, please. Schedule B, [fol. 1773] Sheet 1?

Q. Yes.

A. Yes, sir.

Q. And refer particularly to line 4 which reads: "Shed—Unit No. 1," and in column (h) there is the figure \$7931.36. Will you please explain in detail how you arrived at that figure?

A. That should not be designated as "Shed 1." That's the entire transit area that is used for the purpose of wharf demurrage.

Q. I understand that.

A. The figure was arrived at by taking the percentages of the various carrying charges allotted by Dr. Edwards and applying them on this formula.

Q. All right. I would like the detail, the underlying figures in the record.

Mr. Graham: We don't propose to submit the detail because we don't think that any other witness has been asked to submit any such information at all. We were asked to present here a compilation of figures based upon the Edwards formula for the period of time. We do not have it precisely, with one slight exception which the witness has already testified to, which was brought about by the experience in the intervening time.

I might suggest that so far of all the witnesses called [fol. 1774] my client has been the only one that has complied with the request, and I think it is ill-timed for counsel for Stockton, who admittedly hasn't complied with the request at all—

Mr. Townsend (interrupting): What do you mean we haven't complied with the request at all.

Mr. Graham: Just a moment! Let me finish.

(Continuing:). —to suggest at this time that we bring the break-down of these figures which have gone into the compilation of this data before this Commission.

I might further suggest that this witness is not competent to testify as to the break-down.

Mr. Townsend: I would like to point out, Mr. Graham, that we have produced the costs of our different facilities and have shown how we have derived the figures that I am talking about. I simply want to check back and find what was the cost of his facilities and how he has developed that figure. There is such a discrepancy between that figure and

the others of the other terminals that I want to develop why the discrepancy arises.

Mr. Graham: I don't see that the comparison between the cost figures of this terminal and any other terminal has anything to do with this case. Whether there is a discrepancy or not, you wouldn't expect they would all be the same, would you?

[fol. 1775] We don't propose to produce those figures unless the Commission instructs us to do so.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.  
The request will be denied.

By Mr. Townsend:

Q. Let me see if I can find out exactly what you did without getting any figures. Let's take Unit 1-A to start with. Now, you must have started with some cost of something there; and what cost of what did you use, not in dollars and cents but in facilities?

A. We would take the cost of the land.

Q. What land?

A. Under the shed. The shed is built on land.

Q. Just the shed. Is there anything around it?

A. No, there is nothing else around it except the adjoining shed.

Q. And tracks? You have some tracks on there, don't you?

A. Not for wharf demurrage.

Q. You didn't include anything, then, but what is right under the building itself?

A. That's right.

Q. All right. What did you do next?

A. We took the structures and the insurance and maintenance.

[fol. 1776] Q. Wait a minute. Let us stay with cost first and find our carrying charge there. You start with the cost of the land on which Unit 1-A is located, and you start with the cost of the shed. And I assume you took 25 per cent of that, is that right?

A. What Unit are we talking about?

Q. 1-A.

A. That would be correct.

Q. Then what did you take as your rate of return on that? What percentage?

A. 7 per cent.

Q. 7 per cent?

A. That is right.

Q. Now, then, did you take 25 per cent of the cost of your land and facilities and then take 20 per cent of that 25 per cent?

A. Well, I didn't do the actual extending, but I would assume he took the cost of the entire building including your various depreciations and other costs and took 25 per cent of it.

Q. But you didn't assign all of that to wharf demurrage?

A. 25 per cent of it.

Q. I don't think you did, but let me just see a little further. Did you take the entire cost of 25 per cent of the structure instead of 20 per cent of the cost of the entire [fol. 1777] structure, as Dr. Edwards did in his formula?

Mr. Graham: This witness has already testified—

A. (Interrupting:) I don't know whether Dr. Edwards did that in this formula.

Mr. Graham: This witness has already testified under oath that he complied with the Edwards formula with one exception. I have already stated for the record that this witness is not qualified to testify as to the breakdown of this compilation. He didn't compile it. It was compiled in association with the chief accountant for the company. And it seems to me that so long as this witness has testified under oath that this complies with the formula that is about the most that he can do.

The Witness: The formula percentages couldn't be the same at all terminals anyhow.

Mr. Scoll: Can we go off the record a minute?

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Townsend:

Q. Mr. Ventre, will you refer again, please, to sheet 1 of Schedule B, and particularly to line 19? Will you ex-

plain how you arrive at the figure of \$180.00 for superintendence of wharf demurrage in connection with dock operation?

[fol. 1778] A. That was undoubtedly off of the work sheet that we had by using the percentages. I don't know what that percentage is. We might have it on the work sheets.

Q. Do you know what allocation you made of your total annual superintendence?

A. In percentages?

Q. Yes.

A. I don't know off-hand. I would have to go back to the work sheets to get that.

Q. The percentage?

A. The percentage that we did make, though, was the same percentage as made by Dr. Edwards, because all the allotments in here are on actual use, the same percentages that Dr. Edwards used, except the two I testified to about high-piling equipment.

Q. Did you prepare this statement?

A. Personally, no.

Mr. Graham: He has already testified that he did not and I have stated it in the record six times that he did not.

Mr. Townsend: Is there someone here who can give us that information?

Mr. Graham: There is not.

Mr. Townsend: I don't see how we are getting a picture of what was done at all. I don't see that these figures are [fol. 1779] supported by anything.

Mr. Graham: I don't know as they need to be.

Mr. Townsend: They do as far as I am concerned.

Mr. Graham: We weren't required to produce the supporting documents for the compilation of the formula that we have compiled. We have done what we were asked to do.

Mr. Scoll: I think the items should be explained.

The Witness: We would have to go back to the work sheets to do that. I don't think that any of these forms sent in show the percentages that were used. I haven't seen an exhibit so far that has them.

By Mr. Townsend:•

Q. Turn to sheet 1, Schedule B, line 22. Somebody—I don't suppose you did it—but somebody has bracketed

apparently in ink lines 22, 23, 24, and 25, and it says "B10", and then apparently for all of those items there is a figure in column (h) of \$4366.53. Will you please explain that figure?

A. That is the actual clerking cost that we allotted to wharf demurrage from the best of our ability from our accounts.

Q. Well, does it include—

A. (Interrupting:) In arriving at that a portion of it was taken by taking the total number of tons received on [fol. 1780] wharf demurrage and the total number of tons that were received at the terminal and the total checking cost of the terminal, and taking that proportion. Then to that we added men who are on the payroll entirely in the service of wharf demurrage.

Q. So that includes, then, a proportion of all the checking that you do in and out of the freight cars?

A. There would be a small proportion reflected in there somewhere.

Q. Well now, "small proportion." It's the same proportion that you include of all other clerking costs, isn't it?

A. That's right.

Q. And it would be a relationship of the total tons handled in wharf demurrage to the total tons over the dock, would it not?

A. That's right.

Q. Is it not a fact that Howard Terminal is paid by the railroads for performing the checking to and from freight cars on a large part of the traffic that moves over Howard Terminal?

Mr. Graham: Just a minute. I will object to that question upon the ground it has nothing whatsoever to do with these proceedings. This is the same tactics that Mr. Townsend and Colonel Allin attempted to perform this morning and the Examiner ruled the statement could not be further read. [fol. 1781]

Mr. Townsend: Now, Mr. Examiner,—

Mr. Geary: (Interrupting:) I join with Mr. Graham in the objection, Mr. Examiner, because it has no bearing at all in so far as the issues that we are considering in this proceeding.

Mr. Read: I join with Mr. Townsend. It does have a bearing. If the terminal is compensated once by the rail-



road or anybody else for performing this service, there is no reason why it should again be added into the cost of demurrage.

Mr. Townsend: May I make this further observation? If Howard Terminal or any other terminal is compensated by the railroads for performing this checking, and if the Port of Stockton or any other terminal is, as the record shows, not compensated for performing the same service, then we have here an element where if there is to be additional compensation received by the Howard Terminal they are getting paid twice for performing the same service, whereas the Port of Stockton is paid only once.

Mr. Geary: May I be heard on that for a moment, Mr. Examiner?

Examiner Busham: What do you want to say, Mr. Scoll?

Mr. Scoll: Mr. Townsend, that charge received for per-[fol. 1782] forming the service for the railroads covers traffic that is loaded into or out of cars and that doesn't have anything to do with this issue of wharf demurrage as it is set forth in the formula as I understand it.

Mr. Townsend: It says here "Checking account car-loading" and "Checking account car unloading." I didn't make up the formula. But, as the witness has just testified, some of that checking to and from cars is included in here as an element of expense in connection with wharf demurrage. If he has already been compensated for that by the railroads, how is he entitled to further compensation by the cargo?

Mr. Scoll: Does the witness actually know whether checking to or from cargo is included as an expense of demurrage?

The Witness: Maybe I answered a little bit fast there. In other words, I don't think it is included. It is included in the total figure that we took a percentage of. In other words, where does the checking from the car stop and where does the checking into demurrage start?

Mr. Read: Mr. Scoll, the witness testified how he arrived at the computation. It was a ratio determined by the total number of tons handled to the total number of tons on demurrage, and he simply took his entire clerking costs regardless of whether the cargo was under demurrage or not, and then took this proportion and then added thereto [fol. 1783] 100 per-cent of the cost of the clerks who devote their entire time to demurrage. Consequently, it would be

impossible that this figure would not include a portion of the costs for clerking that had nothing to do at all with demurrage.

Examiner Basham: Objection overruled.

Mr. Graham: What is the question, Mr. Reporter?

(The question referred to was read by the reporter.)

A. I think that has to be broken down a lot. When you say "a large part" I think previous testimony in this particular case showed that around 15 per cent of our cargo is received by car, the balance is received by truck. As to whether or not we are compensated for the checking in and out of car, I have never made a complete study to find out what our cost was. I don't think that we are being paid for the service that we are performing for the cargo. We are being paid by the railroad for the service we are performing for them, such as making damage reports or inspecting bad cars or anything of that type, which the railroad is called upon to do themselves if we don't do it. It is a separate service entirely than that of receiving cargo only.

Mr. Scoll: Mr. Ventre, turn over to Schedule E, Sheet 1.

The Witness: Schedule E?

[fol. 1784] Mr. Scoll: That's right. Sheet 1 of Schedule E. Now, turn to column (i), line 11, "Checking account carloading." In column (i) you have nothing. Now, line 12, "Checking account car unloading" you have nothing.

Mr. Townsend: That is because he lumped them all together in Schedule B.

Mr. Scoll: Just one minute. Turn to Note 6 in Schedule E. It says there "Includes only checking costs which are jointly for the account of wharf demurrage and car loading or unloading, which have been apportioned equally to each service."

Do you actually know now whether or not you did include in your checking cost some checking for carloading or car unloading, inasmuch as you did not put anything on Schedule E?

The Witness: We couldn't separate those costs. We don't keep the costs separately on our work sheets or we don't keep it on our books or payroll. It would be impossible for us to separate those except by percentage in

regard to the total. If that is incorrect, it is impossible for us to develop the cost at this time.

**Mr. Graham:** Does that mean, Mr. Ventre, that the fact of the elimination of those two figures under column (i), Schedule E, Sheet 1, indicates that they weren't included in this report at all?

[fol. 1785] **The Witness:** Well, only to the extent that they might have been included in this question of percentage.

**By Mr. Townsend:**

**Q.** It is a fact, Mr. Ventre, that you took all of the car checking costs incurred on your dock on any and all traffic and allocated a percentage of that to wharf demurrage, is it not?

**The Witness:** Will you repeat that question?

(The question referred to was read by the reporter.)

**A.** We didn't have any separate cost of our car checking and unloading. The only checking cost we had was an aggregate cost of our clerks which included all checking to and from consignees. This did not include the figure—did not include any checking to and from vessel. Now, that's the only break-down we got in our accounts, is the cost of checking to and from the consignees; and whether that came in by car, truck, or otherwise we had no way of separating it except by the question of percentages in relation to the total.

**Q.** The percentage of all such checking to and from consignees is in your study against wharf demurrage?

**A.** The percentage of all such checking to and from consignees, that's right.

**Mr. Scoll:** Did you make any credits for the amounts which you received from carloading and unloading charges? [fol. 1786] **The Witness:** Well, I don't know how you could make a credit. In other words, we took the total number of tons, added to that the tons that were in wharf demurrage and we had a set figure which covered the checking in and checking out of all the tonnage that moved through the terminal, plus that that was placed in demurrage. Now, whether it is correct or not, the only way we could figure on it was that we had to take that percentage in relation to the total.

By Mr. Townsend:

Q. Now, Mr. Ventre, I will not pursue that any further. Let us turn to another subject. You referred to the fact that you included in this study in Exhibit 130, part of your Unit 6-E, did you not?

A. Yes, sir.

Q. Is cargo handled directly by the stevedores between the vessels and Unit 6-E?

Mr. Graham: Just a minute. That has all been asked and answered in the previous hearing.

Mr. Townsend: I am entitled to go into it again.

-Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

By Mr. Townsend:

[fol. 1787] Q. Let me ask another question. Have you included in your study in Exhibit 130 the cost of handling cargo between the vessel and Unit 6-E?

A. Not between the vessel, but between the place of rest as placed by the stevedores and Unit 6-E.

Q. You have included that?

A. Yes, sir.

Q. Where is that, please?

A. That will be found on Schedule E, Sheet 1, line 14.

Q. Under part (b) or part (a)?

A. Part (b), line 14.

Q. Is there any other item in there besides such transferring charges, do you know?

A. Any moving or shipping of freight in connection with wharf demurrage; yes, sir.

Mr. Graham: In any of these units?

The Witness: In any of the units.

Mr. Townsend: Just one moment, please.

Mr. Read: May I ask one question?

By Mr. Read:

Q. Mr. Ventre, at the present time do you absorb this cost that is shown at Line 13, item (b), \$4247.92?

Mr. Graham: Just a minute. That has all been covered in the previous hearing.

A. It is in the cost. I don't know what you mean by. [fol. 1788] "absorb".

By Mr. Read:

Q. Do you get compensated for it today?

A. On some commodities, yes; on some commodities, no. I would say that is based on the rate charged for the commodity, and if the commodity is paying its cost you are getting it. If the commodity is not paying its cost, you are not getting it.

Q. Then the man who stored it would pay the same charge whether it were left on the transit shed or put into this other unit?

A. Well, it is according to what you term as a transit shed. Regardless of where it would be left, he would pay the same charge. But we don't permit any of it to lay on the piers proper.

Q. You remove it all to this other unit?

A. That's right.

By Mr. Townsend:

Q. Mr. Ventre, did you at any place in your study, exhibit 130, and especially referring to Sheet 2, Schedule E, line 40, expand your variable costs per square foot to take care of aisle space and waste space?

A. Yes. You do that automatically in getting from column (l) into (m). That is, the figure given in column (l) is based on a hundred per cent, and when you get down [fol. 1789] to 60 per cent you get the figure in column (m).

Q. Does your figure of 55,322 square feet in line 91 of sheet 3 of Schedule B purport to include aisle space and waste space, or is it just the actual space that is used for wharf demurrage cargo?

A. It includes the aisle space and waste space.

Mr. Graham: So that in this respect you used exactly the same formula?

The Witness: That's right.

Mr. Townsend: That is all I have, with the understanding that that additional information in Schedules A and E

will be supplied along with the explanation suggested by Mr. Differding.

Mr. Graham: I might suggest that there is no understanding whatsoever in so far as the Howard Terminal is concerned with respect to supplying any information at all.

By Mr. Read:

Q. Mr. Ventre, you have some pipelines on the Howard docks, do you not?

A. Yes, we have one pipeline.

Q. Do you isolate it from any figures here which have to do with the pipeline, either in the way of revenue or expense in tons?

A. All the figures that we have been discussing have been those in connection with wharf demurrage. There is no [fol. 1790] wharf demurrage involved in the pipeline.

Q. Then for that reason have you deducted out of general costs revenue tons, and so forth, that proportion that is strictly pipeline, or do those figures include that?

A. What do you refer to as "general costs" Mr. Read?

Q. Well, there must be some cost, I presume, for the maintenance of a pipeline operation and so forth. There must be some revenue derived from the pipeline.

A. Well, that facility was there at the time Dr. Edwards made his study. The pipeline was there some 19 or 20 years and Dr. Edwards in making his study allocated certain percentages of each item of plant overhead to each service. Where a percentage was used by Dr. Edwards we have used exactly the same percentage, with the exception of that one with reference to high-piling.

Q. Then if Dr. Edwards excluded such figures your reports do; if he didn't your reports do not, is that right?

A. That would be right.

Q. Is that right?

A. Yes.

Mr. Read: Mr. Differding, can you tell us whether such an exclusion is made?

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: Back on the record, please.



[fol. 1791] By Mr. Read:

Q. You testified, I believe, Mr. Ventre, that the cost of high-piling inbound cargo was greater than that of outbound cargo?

A. That's right. I believe the cost of piling as well as the variable cost would change by the density of the particular commodity.

Q. Then it is the density that causes that difference rather than the direction of the movement?

A. No, mostly the fact that on the outbound movement the particular commodities that are stored are mostly canned goods and the conveniences of handling, which I formerly testified to, that you don't have to re-handle by hand the majority of the cargo.

Q. That comparison you make, then, is confined to the same commodity, is it, only with respect to the different direction of the movement?

A. No. If the canned goods were received inbound; for instance, if we received grapefruit or canned beans, or canned soup from the east coast, or if we were fortunate enough to receive pineapple from the Islands, stevedores would put it on the floor of the dock and then to high-pile it we would have to handle it by hand either on to skids so as to use the machines, or otherwise you would have to do the entire piling by hand, one or the other, which I would [fol. 1792] say would be probably three times as high as the present cost of the outbound cargo.

Q. All outbound cargo or outbound canned goods?

A. Well, I would say on the majority of all outbound cargo, that is, with the exception of a few items like wool and possibly beans.

Q. Will you say that difference is as marked if you compared canned goods outbound with steel plates inbound?

A. Well, there your cost of handling steel plates—that is what I say. This particular study gives us an average cost of all commodities. Now, in measuring the rate that should properly be applied you would have to make a further study of each individual commodity that moves in any quantity. In other words, the cost of high-piling steel in my estimation and from my actual knowledge would be far less than the cost that we find here on the average of 38 cents. I might add to that explanation, too, that in setting or allow-

ing any specific rates, what the traffic will bear and competition should be taken into consideration rather than an average over-all.

Examiner Basham: Any further questions?

By Mr. Read:

Q. Now, refer please to line 45, sheet 2, Schedule E, where you show 17,749 tons as having been high-piled. Is that the total tons of the cargo or does it just represent the [fol. 1793] actual amount that was high-piled?

A. That represents the total amount of cargo to the best of our judgment and records that was high-piled.

Q. That is only the cargo that was placed above the normal piling heights?

A. No. My interpretation of "high-piling" is anything that you may pile, whether it is the lower tier or upper tier, so long as it is not piled by the stevedores or teamsters. In other words, if we high pile cargo and have to put in the lower tier ourselves for the possibility of better piling, we would have to do so. Our practice at the Howard Terminal is that the entire piles, at least 99 per cent of the time, are piled by us if it is high-piled at all.

Q. Your Exhibit 131 shows the amount of space used for demurrage, and I take it it is for that entire period of November, 1938 to October, 1939?

A. To the best of our ability that is the proper application.

Q. And is there somewhere in these exhibits figures that will give us the square feet of the entire space that is used for transit operations and the ratio that this bears to that total similar to what was put in by Mr. Engel?

Mr. Graham: I think that is already in.

Mr. Read: Is it?

Mr. Graham: I think it is in connection with the exhibit [fol. 1794] showing the particular facilities.

A. I think it is in one of the papers in the earlier hearing, but I wouldn't say definitely.

Q. Does the record today show the total revenue from operations for this period and the ratio of this \$31,263.55 from wharf demurrage to the total revenue of the Howard Terminal Company for their terminal operations?

A. Not to my knowledge.

Mr. Read: Could we have that, Mr. Graham? Similar to the figures put in by Mr. Engel, the exhibit introduced yesterday?

Mr. Graham: I don't know. I would have to talk to Mr. Howard before I would answer that question. That is not within the request of the Commission.

Mr. Read: I have here, Mr. Graham, the last annual report of the Howard Terminal Company filed with the Railroad Commission, but that is for the calendar year 1939 and, obviously, a proper comparison cannot be drawn for that period with the period that is part of '38 and part of '39.

By Mr. Read:

Q. Mr. Ventre, you can answer this question if you wish to and if your counsel wishes you to. You heard Mr. Engel's testimony today with certain recommendations for certain commodities in which the Parr-Richmond Terminal is interested, and your counsel questioned him at length [fol. 1795] regarding his suggestion for overcoming the abrupt increase that would occur on the sixth day under the note in the Order in Case No. 4090. If that part of Mr. Engel's objection were withdrawn so that you would have a flat per diem rate and the goods would automatically go into the storage on the sixth day in accordance with the note, would that come close to the ideas of the Howard Terminal Company?

Mr. Graham: I think, Mr. Examiner, if I may have Mr. Ventre at this time express himself on this subject not only in response to the question but on the general subject, because he has previously testified in response to questioning at the previous hearing, and since then I think he may have reached some conclusions slightly at variance with his previous testimony. I was going to ask him some questions on this. If he can cover that once we can save time.

Examiner Basham: Go ahead.

A. Well, after making a further study of the statements we heard previously in the first section of this hearing we came to the conclusion that no one had contradicted Mr. West's testimony as to the rates and practices in the north-

west. He stated that where these rates were applied in the northwest, which includes Portland, Seattle and Tacoma, that they have had the desired effect of clearing the transit space within a reasonable length of time; and, as [fol. 1796] we understand it and our belief is, that is what we are here to accomplish: Clearing strictly transit space within a reasonable length of time and at the same time not lose the revenue which we have been enjoying from cargo that we have been enjoying. And we feel that there should be two sets of rates: One based on a daily basis not to exceed the rates testified to by Mr. West; and the other on a 30-day period basis plus a receiving and a delivering charge.

In the application of those it should be necessary for the owner to declare whether he wants a daily rate or a monthly rate, as the burden should be on him as to whether he wants a daily rate which in the aggregate over a long period is going to be high or excessive, or whether he wants a storage monthly rate plus receiving.

Dr. Edwards in his study—I think I could refer to the page.

Mr. Graham: Here is the schedule. That note there (indicating) is the note.

A. (Continuing:) Dr. Edwards on page 103 of the final report stated that "On commodities occupying between six and eight square feet to the ton unplied, such as canned goods, fertilizer and sugar, it is a matter of indifference whether or not goods are high-piled if they remain approximately 30 or 40 days. Beyond this period it is just definitely cheaper to high-pile."

[fol. 1797] I believe it should be incumbent upon the shipper to state whether he wants to take this daily rate, which after 30 or 40 days would be costing him more than the monthly rate would, or whether he wants to declare himself for the monthly rate and in so doing compensate the terminal for any piling that may be necessary to hold it for a long period.

The objection that I have to this particular note that Mr. Engel testified to is that the 5-cent rate applied for five days, then it automatically went into a storage period.

Mr. Scoll: By the way, what note are you referring to?

The Witness: Page 99 of Appendix E.

**Mr. Graham:** The report in Case No. 4090. That note was read into the record this morning and is a part of the testimony in this case now.

**The Witness:** The note was read this morning with reference to the application of five cents for the first five days and then automatically going in storage. That in my estimation penalizes the shipper heavily on the sixth day, and I don't know of any reason why he should be penalized on the sixth day any more than he should possibly on the fourth or the eighth. And if a shipper came down at the expiration of five days and said "I want to take that out tomorrow", you would be compelled to tell him "Well, now, you are going to have to pay a receiving and delivering charge [fol. 1798] tomorrow." I think the shipper ought to have his option whether he wants to continue on the 5 cents a day rate or whatever rate is found proper to be applied; whether it is a 2-cent rate or a 5-cent rate or 10-cent rate.

**Mr. Graham:** Is it not a fact that the tendency under the application of that whole note would be for the shipper to leave his goods on the dock rather than to move them, which you hoped he would do?

**The Witness:** That is the objection I have to the so-called 15-day schedule without the receiving and delivering charge attached to it, because after he has once paid for the 15-day period he would have a tendency to leave his cargo there, similar to the statement made by Mr. Engel where he applied five cents a ton a day for four days and then carried it free for the next fifteen days. It doesn't seem like that serves the purpose.

**By Mr. Read:**

**Q.** Now, Mr. Ventre, let us see if you and I interpret this thing the same. We will take canned goods, for instance. The charge for a 15-day storage period if the shipper declared the goods for storage immediately that they were placed on the dock would be 25 cents for receiving and delivering and  $12\frac{1}{2}$  cents for the 15-day period or  $37\frac{1}{2}$  cents.

**Mr. Graham:** You are using Appendix E throughout? [fol. 1799] **Mr. Read:** I am using Appendix E, page 98.

**By Mr. Read:**

**Q.** Do you agree with that?

**A.** That's right.



Q. If the shipper delivered the goods to the dock and did not declare them for the first five days he would pay five cents per ton or 25 cents.

Mr. Geary: You are figuring five days after the free time?

Mr. Read: After the free time, yes.

By Mr. Read:

Q. They would then automatically go in storage and he would have to pay an additional 25 cents receiving and delivering charge, plus  $12\frac{1}{2}$  cents, or a total of  $37\frac{1}{2}$  cents plus 25 cents, which is  $62\frac{1}{2}$  cents for the sixth day?

A. That would be right.

Q. He would likewise pay that charge for a total of five days at 5 cents per ton and another 15 days or 20 days all told? In other words, there would be no difference between the charge for the 20 days and 6 days?

A. That's correct. And that is the objection that I find in trying to set the rate on a daily basis so high that it overlaps the term rate in too short a period. I think the term should not be less than 30 days but that the daily rate [fol. 1800] should not overlap until about the time set out in Dr. Edwards' study. The difference between high piling and low piling is approximately 30 or 40 days. The five-cent rate in our estimation would be too extreme a penalty on outbound cargo.

Q. All cargo?

A. I would say all cargo other than possibly wool or, to my knowledge, of outbound cargo.

Q. You would not—

A. (Interrupting:) Or automobiles.

Q. You would not, would you, propose any reduction in the per diem charges that are now applicable?

A. No, I would not.

Q. So that if they were higher than 2 cents per day—

A. (Interrupting:) If they were higher than 2 cents per day at the present time I would not propose to reduce them.

Q. Do you feel that it is a burden upon the shipper to declare his purpose at the time the goods are placed on the terminal, that is, as to whether he wants a period storage or not?

A. I feel that it should be. In other words, when a shipper's cargo arrives on the dock, if he doesn't declare



it for a period basis you have reason to assume that he is going to remove it within a reasonably short length of time, and if after leaving it there five, ten, fifteen or twenty days [fol. 1801] you decided, well, it is not going to move, you turn around and high-pile it, and he comes in and takes it out the next day. So I feel that the daily basis should apply until such time as the shipper declares himself for the monthly basis.

Q. Oh. Well, then, you would have the note read that there would be no automatic storage at all? He would pay a flat per diem basis until the time he declared it for storage?

A. That's right, unless you ordered it off the pier under the rule that we all have in our tariffs saying that we can order it off the pier. There was considerable testimony given in this case, as I understand it, that demurrage rate or storage, whatever it may be, is not supposed to produce any revenue. If you strictly apply that interpretation at the end of the free time you ought to apply your rule and automatically move it off. To my knowledge, nobody does it. So they evidently want the revenue.

Q. Well, then, you don't subscribe to the interval of 15 days?

A. I would say the intervals should be 30 days.

Q. Do you think it would be reasonable to charge a shipper on the sixth day, five days at 5 cents per day, which would be 25 cents, plus 25 cents, which would be the storage cost for 30 days; do you believe the 12½, plus the 25 [fol. 1802] for handling, or 75 cents per ton for leaving the goods on the dock for 6 days is reasonable?

A. I think I covered that.

Mr. Geary: Just a moment.

Mr. Scoll: He covered that several times already.

A. (Continuing:) But I would say it is reasonable if the shipper elects to choose the lower of the two storage rates. In other words, if he elects to choose a monthly rate and then for some reason or other he draws it out within a short length of time, I think it is proper that he pay for the receiving charges the same as he would in any warehouse business.

Mr. Scoll: When do you say that that election should be made?

The Witness: That is up to the shipper to make it, when he desires to elect it.

Mr. Scoll: At any time the goods are on the dock?

The Witness: That's right.

Mr. Graham: In the intervening time it will be running on a per diem?

The Witness: If he doesn't elect until such time as he does declare it, it would be on the per diem rate.

Mr. Graham: The choice would be up to him.

[fol. 1803] The Witness: That's right.

Mr. Geary: It would take a wharf demurrage rate for a period of five days, then it may pass to a higher wharf demurrage rate and then at any time between that time he could declare it for storage.

The Witness: You may have a lower wharf—I think that there is a lot of mix-up in this whole thing as to whether we are talking about storage, demurrage or what.

Mr. Geary: Apparently they have used the terms interchangeably, sometimes referring to them as "demurrage" and other times referring to them as "storage."

The Witness: My theory would be, if a shipper leaves his cargo on the dock without declaring it for five, six, seven or eight days he would pay the daily rate of storage or demurrage, or what have you, until such time as he declares it for some other purpose. But until he declared it, that is, for removal from the dock or to place it for term storage—(pause).

By Mr. Read:

Q. If the rate were 5 cents per ton per day and he left it on the dock for 30 days and did not declare it he would pay \$1.50 per ton?

A. That's right.

Q. How would you have a record of this declaration of intention from the shipper?

[fol. 1804] A. Any way in which he may ask it, whether he phones it or writes it to you or anything else. Just the minute you would turn it over to a monthly basis he would leave a record.

Q. Could you tell me how anyone in the organization other than yourself would know when that request was made and what particular time it would be made?

Mr. Geary: If the Maritime Commission is going to issue an order with respect to this proceeding I presume that they will have sufficient methods of enforcing the order if they issue it.

Mr. Read: We would like to know about it right now.

Mr. Geary: This witness can't tell you, Mr. Read. It will be the Maritime Commission.

Mr. Read: I am asking him to suggest a way to do it.

Examiner Basham: The objection is overruled.

A. Well, I don't know that anyone other than the operator has got to know and the shipper has got to know when it has to be transferred from one basis to the other, unless it is for the purpose of policing. And if it is a question of policing, I think there are a thousand and one questions that you might ask about anything that comes up.

Mr. Graham: In any event, Mr. Ventre, if the Commission [fol. 1805] should issue an order that any such request be in writing, they would be in writing?

The Witness: They would, but it wouldn't be practical, I would say that. But if they issued an order, why, I know that the order as far as the Howard Terminal is concerned will be applied as issued.

By Mr. Read:

Q. Mr. Ventre, do you not carry in your tariff today a provision that a charge will be made for removing the goods from one portion of the dock to the other?

A. For the account of whom it may concern. Let me read the tariff. We have nothing of that type. It is for the account of the party for whom it may be performed.

Q. Hasn't it generally been testified that high-piling is being done today and not being charged for?

A. I will say that in my experience I have never had any shipper ever ask us to move his freight from one location on the dock to another or to high pile it, except in very remote instances, and when they have requested it they have been billed for it. But the instances are very remote.

Q. Does the Howard tariff read the same as the Farr tariff in respect to that particular rule?

Mr. Geary: You don't mean to infer by that question and the reference to the Parr tariff that the practice which

you are interrogating Mr. Ventre about is a practice which [fol. 1806] is engaged in by the Parr Terminal, do you?

Mr. Read: Read the question.

(The question referred to was read by the reporter.)

Mr. Read: I am just trying to find out how this change in the status of the goods from a per diem basis to a period basis would come about so that we would know just when the instructions were given and when the rates were applied that they were the proper rates.

A. Well, I think—

Mr. Read (Interrupting): He has just said something about piling for the account of whom concerned, and that no shipper ever gave him instructions to move the goods. Now, if the rule in his tariff reads the same as it does in the Parr tariff, and I am inclined to believe, although it may not be correct, that it is the same as the Parr tariff, there is nothing in that rule which says "At the request of the shipper."

The Witness: When we move freight today on our docks the one that is concerned is ourselves. We are moving it for our own convenience, to get it out of the way or to high-pile it to take less floor space.

By Mr. Read:

Q. Then if you have to high-pile under this proposal that you have and it was for your own convenience and not requested by the shipper, you would take the same view and [fol. 1807] not charge for it?

A. We never charge for high-piling today. There is no charge made for high-piling. I don't believe that at the present time we have a—

Mr. Scoll: (Interrupting) Just a moment. If Mr. Read has a point there, that no ruling or practice of the Commission might order with respect to the determination of when the daily or the period basis is to begin, would be effective because it would be evaded by the terminals, I think he ought to elaborate upon that a little more. Is that from your experience you are talking about now or from somebody else's experience?

Mr. Read: It is just on this particular thing that I cited about this extra handling. It is treated in this manner: That the terminals consider it something that is necessary

because of some inconvenience on their own dock and no charge is made.

Mr. Graham: What has that got to do with this at all?

Mr. Read: I am just trying to find out how this rule would work. I don't know. That is why I asked the witness.

Mr. Scoll: You are talking now about high-piling, but before you were talking about giving notice about a change of storage status from a daily to a period basis. As I got [fol. 1808] the inference from your remark, it was to the effect that it couldn't be policed and there were opportunities for evasion. If that is the sense of your remark I think that we ought to have in the record some testimony as to whether or not if that actually happens and where.

Mr. Read: Well, obviously it doesn't happen, Mr. Scoll, because there is no such provision in the tariff today.

Mr. Scoll: But you are suggesting that it would happen.

Examiner Basham: I don't think we are getting anywhere at all.

Off the record.

(Remarks outside the record.)

Examiner Basham: On the record.

Mr. Graham: I have one more question, if I may.

By Mr. Graham:

Q. Mr. Ventre, you spoke about this inbound cargo where the expense of handling was greater than with outbound cargo. What particular commodity have you in mind?

A. You mean on inbound?

Q. Yes.

A. Well, any commodity. I think we have touched on canned goods, that is, comparing outbound canned goods received for eastbound shipment or outbound shipment as [fol. 1809] compared with inbound shipments of grapefruit, pineapple or soups.

Q. Do you have a considerable volume of that type of cargo as compared, let us say, with Encinal or other terminals, or does Encinal or other terminals have a greater volume of it than you?

A. Well, we don't have any volume of canned goods in that inbound category, and I would say that any rate that is prescribed should reflect the difference in cost between

an outbound movement and an inbound movement rather than lump them.

Q. Do you know what Encinal's picture is from your own knowledge in that respect?

A. I do know that they handle a considerable quantity of pineapple on their docks which comes in by steamer, and there is no question in my mind—we have had some experience in years past on pineapple—that the cost of handling that pineapple would be considerably more than handling outbound canned goods if it is handled in the same facility.

Mr. Graham: I think that is all.

Mr. Townsend: I have one question.

By Mr. Townsend:

Q. Mr. Ventre, do you believe that it would be better to state the wharf demurrage charges or rates on the principal commodities on a package basis instead of a tonnage basis?

A. When you use the term "demurrage" I would say in [fol. 1810] connection with water movement, whether you are talking about demurrage or storage, the so-called daily rate, I would say, would be better to prescribe it on a tonnage basis because you are continually running on to miscellaneous tonnage that might lay over the free time and your cost possibly of going down and finding out what the cubic measurement of a certain particular shipment is that is only on hand for one or two days might be more than you would get out of the revenue. On the other hand, I don't see any reason why this rate should be so high on the daily basis that it would automatically defeat its purpose by having a rate adjacent to it on a removed property or across the street from it that would tear down that daily rate.

Q. I was just talking about the question of the principal commodities, canned goods and some of the other ones, whether it would be fair in the application of the charges to have your rate stated not in so many cents per ton per day or per ton for 30 days, but so many cents per standard package.

A. For the type of cargo that runs to and from steamer, I would say per ton, where you are taking canned goods where at the present time you have undoubtedly 50 or more sized packages.



Mr. Townsend: That is all.

Examiner Basham: You are excused.

(Witness excused.)

[fol. 1811] Examiner Basham: We will have a short recess.

(A short recess was taken.)

Examiner Basham: On the record, please.

Mr. Scoll: In connection with the point that was raised by Mr. Townsend and rather thoroughly discussed by counsel and witnesses, may I request that Howard Terminal produce for the record the lump sum amount of carrying charges for which the amount of \$7,931.36 assigned to wharf demurrage as shown on Sheet 1 of Schedule B, Line 4, and similarly the lump sum of carrying charges on land for which the amount is \$4512.74 assigned to wharf demurrage as shown at Line 13 on Sheet 1 of Schedule B. The same for other facilities as shown in Line 8 on the same sheet and other facilities as shown on Line 17. If we have those lump sum amounts and, in addition to that, if he will furnish us with the total amount of shed area—

Mr. Graham: (Interrupting) You have that.

Mr. Scoll: (Continuing)—from which the amount of 55,322 square feet is assigned to wharf demurrage, column (h), Schedule B, Sheet 3.

Is that amount, Mr. Graham, the 97,231 square feet?

Mr. Graham: Mr. Differding took off some figures during the recess which gave the total square foot area of the sheds, part or all of which are used for wharf demurrage. Whatever that figure is I am agreeable to have it read into [fol. 1812] the record. I don't know what it is.

Mr. Scoll: That figure is 97,231 square feet. Are we to understand that that is the total shed area from which the amount assignable to wharf demurrage of column (h), Schedule B, Sheet 3 is taken?

Mr. Graham: Unless we tell you to the contrary in reporting this information.

Mr. Scoll: Will you confirm that when you report the other information?

Mr. Graham: We will.

Mr. Scoll: Does that answer your requirements, Mr. Townsend?

Mr. Townsend: If it satisfies you I am happy. I don't think personally that it gives the same information that the others have produced. Now, I am not trying to be obstinate or anything there; but I do think that Howard Terminal should furnish the complete information for column (c) of Schedule A and B just as Encinal and the Port of Stockton have done. Now, if you are satisfied with it, I am satisfied too.

Mr. Scoll: There has already been a request on the record for the complete information to be supplied for column (c) of Schedule A for the record, and the information that I requested covers column (c) in Sheet 1 of Schedule B.

[fol. 1813] Mr. Townsend: Where do we stand on column (c) of Schedule A? Will that be produced?

Mr. Scoll: Yes.

Examiner Basham: Go ahead.

Mr. Scoll: Mr. Graham.

Sumner Graham resumed the stand and further testified as follows:

#### Direct examination.

By Mr. Scoll:

Q. You have been previously sworn?

A. That's right.

Q. Have you before you a copy of Exhibit 140?

A. Right.

Q. That was prepared by Encinal Terminals?

A. Yes.

Q. In preparing Exhibit 140 did you follow the formula of Dr. Edwards?

A. Precisely.

Q. Did you make any departures from the formula?

A. None whatsoever.

Q. You used the period from November 1, 1938 to October 31, 1939, I see.

A. That's right.

Q. And that was a typical period of your operations in which there were no strikes?

[fol. 1814] A. That's correct.

Q. The figures set forth in Exhibit 40 are based on your books and records and your actual operating accounts, are they?

A. That is correct.

Mr. Scoll: I have no further questions at this time.

Cross-examination.

By Mr. Graham:

Q. You heard Mr. Ventre's testimony in connection with canned goods inbound, particularly pineapple, did you not, Mr. Graham?

A. I did.

Q. Does Encinal enjoy a considerable movement of these inbound shipments of pineapple?

A. We do.

Q. How is that reflected in your studies that you made?

A. In what way do you mean?

Q. Or let us say this: Does it reflect itself in the study?

A. Yes.

Q. How?

A. Well, all of the costs allocable against pineapple or any other commodity on wharf demurrage during this period are included in the total tonnage shown in our Exhibit 140. [fol. 1815] So any of the costs which would arise from the handling of pineapple would also be included in the figures included in our study.

Q. I take it, then, that since there is that inclusion your figure would necessarily be higher than if you enjoyed other cargo which didn't require the high cost that pineapple does?

A. That's correct.

Q. Are all of your units included in this study on Schedule A, Sheet 1?

A. The units?

Q. Transit sheds?

A. The units within which we stored goods during this period are covered, Unit A and Unit C.

Q. And there are other units in which you had previously or have since stored which are not included in this schedule?

A. There is one other unit, Unit B, in which we store a very, very small amount of wharf demurrage at any time.

Q. That wasn't used during this period?

A. That's correct.

Q. How about others that you do store in occasionally besides A, B, and C?

A. The costs encountered at buildings other than the three which are located at the foot of J Street and on the water are not included in this study.

[fol. 1816] Q. Although you do store on so-called wharf demurrage in those facilities?

A. That is correct.

Q. And you did during this period?

A. I am not sure of that, Mr. Graham.

Q. Is the revenue reflected in this account at all?

A. Not knowing whether or not we had storage in any outside buildings I couldn't answer that question.

Q. Well, all of the revenue is accounted for in this study whether you did or you didn't have storage in outside buildings?

A. That is correct.

Q. How about transfer charges to or from those outside buildings?

A. Now that you have gone into the question I will say that during this period there was no storage in any outside buildings which would change the figures in this schedule. There are no revenues earned by Encinal on storage in outside buildings which are in this schedule. Therefore, the only revenues and expenses which would be of interest are those which arose out of storage in Units A and C.

Q. May I talk about the outside buildings for just a moment?

A. Right.

Q. First of all, as I understand it, you do not know [fol. 1817] whether you did or you did not have such storage in these outside buildings during the period of this schedule?

A. I corrected that by my statement when I say that there was not. There are no costs or no revenues included.

Q. I understand. Was there any storage during that period?

A. No, there was not.

Q. And since that period, however, and at present there is storage in those facilities?

A. That is right.

Q. So that if this were made up covering the period in which you did have storage in those facilities the results of this study would be different, of course?

A. Would be changed, of course.

Mr. Scoll: Do you mean by that that your costs would be different, the ultimate unit costs?

The Witness: Yes. Your costs would be different in relation to your revenues.

By Mr. Graham:

Q. Your revenues would remain the same?

A. That is correct. But your costs and your revenue would be different.

Mr. Graham: I think that is all.

By Mr. Townsend:

Q. In your last answers pursuant to Mr. Graham's questions, [fol. 1818] were you referring specifically to some of the uptown warehouses that you mentioned in your prior testimony in February?

A. That is correct.

Q. And you say that during the period covered by this exhibit there was no wharf demurrage or wharf storage cargo in those warehouses?

A. That's correct.

Q. Referring for a moment to Schedule B, Sheet 1 of your Exhibit 46, just so that we can see the method that you have followed, will you take, for example, line 4, which shows the figure of \$37,445.56 in column (c) and then the figure of \$14,069.06 in column (h); will you just explain briefly the method that you used in order to develop those figures?

A. We find the carrying charges according to the formula as set up by Dr. Edwards on the total shed of Unit A and then applied that same figure, that same cost against the number of square feet which we found we were using for wharf demurrage in Shed A, and the same method of handling was followed in regard to Shed C.

Q. Do you show the number of square feet which were involved in Lines 89, 90 and 91 of Schedule B?

A. That's right.

Q. And the figures on the left in column (d), I assume, [fol. 1819] are the total areas and those are the wharf demurrage areas on the right?

A. That is correct.

Q. Well, then, as I understand, in going back again to Line 4 of Schedule B, and the other items involving carry-

ing charges you did not allocate 20 per cent; you took the ratio of what you found to be wharf demurrage space to total space?

A. Actually, yes.

Q. And did you follow that same percentage throughout all of these figures, including the dock operation costs?

A. We followed the percentage as set forth in the Dr. Edwards' formula in 1935. We used those same percentages in 1938 and '39.

Q. You mean by that that you took whatever percentage Dr. Edwards took in building up your costs for his formula in 1939?

A. That is correct.

Q. And carried those through?

A. That is correct.

Mr. Townsend: That is all, thank you.

By Mr. Graham:

Q. May I go back to this same question? Am I correct in my understanding that you did not use the 20 per cent referred to in Schedule B, Sheet 4, but that you took the actual costs of the percentage of the area used for demurrage?

[fol. 1820] A. If you will allow me one minute I will make the computation that will give you the answer to that question. (Calculating.) Based on the total area of Unit A and Unit C 20 per cent would amount to 52,555, whereas our figures show 47,910, which is quite close.

Q. And your computation from then on in connection with Schedule B is based upon the percentage that the area actually used bears to the whole area?

A. That is correct.

Q. And not 20 per cent?

A. That's right.

Q. In other words, you did exactly as Mr. Ventre of the Howard Terminal did?

A. I don't know just—

Q. (Interrupting:) I mean, the same formula that they used, the actual space used?

A. Yes. We took the actual cost of carrying the total areas, and then applied that cost against the area which we used on wharf demurrage.



Q. Out of the whole?

A. That's correct.

By Mr. Townsend:

Q. In determining your underlying costs did you take just the transit shed part of, whatever you call it, Unit A and Unit C; or did you include any of the apron, and so [fol. 1821] on, to start with?

A. No. There is no part of the apron charged to wharf demurrage under Dr. Edwards' formula.

Q. You just took, then, your actual cost of your transit shed and the land under it?

A. That is correct, in taking into consideration the aisle space and increasing your carrying charges so that your full return is on just the area used by wharf demurrage.

By Mr. Graham:

Q. While these gentlemen are talking may I go on with some more questions on this particular subject? I take it the reason you used the actual percentage of surface area covered for demurrage purposes as it bore to the whole area was because you found that to be more accurate than the 20 per cent suggested by the Edwards theory?

A. Well, actually we didn't take into consideration the 20 per cent, nor did we work on a percentage feature. We took the actual cost to carry all of the area and if that was a dollar per square foot, then for the number of square feet that we used on wharf demurrage we applied that \$1.00 per square foot. There is no question of percentage in this at all.

Q. But if you did use the percentage you would come out with the same answer?

A. Yes.

[fol. 1822] Q. And you did that because you found that was more accurate in respect to your own operations than the Edwards theory of 20 per cent allocation?

A. Yes. You see, this formula was made by Dr. Edwards on paper with respect to uniform cost accounting. Now, you couldn't expect that all of his figures would hit each terminal right "on the nose", so you would have to use your actual figures in order to have a true picture.

Examiner Basham: Is there anything further?

Mr. Read: Yes.

By Mr. Read:

Q. Mr. Graham, the Encinal Terminals have a warehouse operation I believe they carry on under the California Warehouse Tariff?

A. We do.

Q. Is any of the revenue or any of the expense included in this statement connected in any way with cargo that may have been handled under the Warehouse Tariff?

A. No.

Q. Do you permit the storage of goods on the transit areas of your dock under the rates named in the Warehouse Tariff?

A. We do, except that those areas are separated by fences and outside parties or people who are not in our employ are not allowed to go into those areas to handle goods. We handle the goods from and to those particular [fol. 1823] warehouse areas which were set apart from the transit areas by fences.

Q. But they are under the same roof?

A. They are under the same roof.

Q. And in the same space?

A. That is correct.

Q. And simply by putting a fence around it you either in a sense declare it as warehouse area or demurrage area?

A. Well, not quite as simple as that, Mr. Read. There is a different method of handling in the warehouse and under warehouse rates and regulations than under our present wharf demurrage rates and regulations.

Q. Oh, certainly.

A. And so in order that our warehouse operations may be held separate and distinct from our wharfinger operations, those fences are placed about it. And all of the rates, rules and regulations contained in the Warehouse Tariff are in effect on that particular cargo which is on a warehouse basis and which might be in another building, for that matter, so far as the difference in the two methods of handling.

Q. Then during this period, if there were any cargo placed on the transit shed which you placed a fence around and charged under your Warehouse Tariff, you omitted those figures from this report?

A. That is correct. And beyond that there was a physical [fol. 1824] handling which had to be gone through before

the goods went from the transit areas into the warehouse areas.

Mr. Read: Will you read that last answer?

(The answer referred to was read by the reporter.)

By Mr. Read:

Q. Oh, are the goods actually moved?

A. Oh, yes, into those areas which are fenced in. Those areas do not change from day to day merely by moving fencing.

Q. Oh. I had the impression that you had a portable fence and just put it around the cargo that was to be warehoused and the fence was taken away when the cargo was removed?

A. Those fences haven't been moved for a good long time. The cargo is picked up from the transit area and moved into the warehouse area by our labor, for which we get a charge.

Q. On Line 46, Sheet 2, Schedule E, you show those figures for the expense of the average cost per ton of high-piling, which looks like 68.02. Is that correct?

A. That is correct.

Q. And that is only for the high-piling cost?

A. That's for—in some instances, especially on inbound cargo, we must pile the goods from the floor up rather than starting after the seventh case or the first tier.

Q. And so the tons high-piled shown in the line above includes the weight of the goods from the floor to the top [fol. 1825] of the pile rather than that portion only high-piled?

A. That's right.

Q. To this 68.02 must be added other costs to arrive at your complete cost of storage, is that correct?

A. Yes.

Q. And where does that appear on your exhibit, please?

A. On Schedule E, Sheet 2.

Q. And that is 41.5 cents per ton, is that it?

A. You have to take into consideration, according to Dr. Edwards' formula, checking, miscellaneous moving, overheads variable, overheads non-variable.

Q. Do you come out with a final figure of 41.5 per ton when you include all those items?

A. No. If you wait just a second I will give you the figures: Now, your checking is 9.5 cents; your miscellaneous moving is 4.55 cents; your non-variable overhead 19.60; variable overhead 11.58; floor space cost, taking into consideration the fact that one ton of canned goods not high-piled would occupy 7.4 square feet, must be multiplied by the square foot cost of .0576, which gives us a figure of 46.02, or a total of 87.85 cents on cargo 30 days not high-piled.

Q. 87.85?

A. Right.

Q. Per ton?

[fol. 1826] A. That's right.

Q. Would the cost be less if it were not for pineapple?

A. Well, the pineapple does contribute somewhat to this cost. However, there are other tonnages of inbound cargo which are discharged to the dock by the stevedores and must be removed from that particular point if the goods are going to remain in storage; and those costs are higher than on so-called outbound cargo.

Q. I take it from the result of these computations that the costs that are reflected here in this demurrage and storage service in so far as Encinal is concerned is almost as expensive an operation as the expense connected with the other services that are rendered?

A. Well, you have some figures upon which to base that assumption.

Q. I am merely—

A. (Interrupting:) However, I haven't, so I couldn't answer that question.

Q. The thing that strikes me was the relationship of this 87.85 cents per ton, and that if you published a storage rate that would produce that the relationship of that rate to the rates published in your tariff for other services, such as service charges and carloading, and so forth.

A. You can't assume that either.

Mr. Scoll: That is an interpretation that you can make [fol. 1827] from the exhibit, Mr. Read. I think it is rather a question of argument, isn't it?

By Mr. Read:

Q. If you will refer to Schedule A, Sheet 1, you carry thereon certain depreciation and carrying charges on struc-

tures, wharves and land. Are those properties owned by the Encinal Terminal Company?

A. The structures are,

Q. Is the land?

A. No, we rent the land.

Q. You rent the land?

A. Yes.

Q. In other words, it is still owned by the Alaska Packers?

A. That's correct.

Q. Did you compute these carrying charges on the valuation that was placed on that land by Dr. Edwards and the railroad engineers in their investigation in Case No. 4090?

A. We did.

Q. Mr. Graham, I would like you to refer to Exhibit 142. Under the heading "Capital Assets" you show "Wharves, Etc. \$1,312,900.83". Does that "Etc." include land?

A. No, it does not.

Q. What does it include besides the sheds and the wharves?

A. I will have to—I know it doesn't include any land, but I will have to find out exactly what. There may be [fol. 1828] some small buildings around the facilities which have nothing to do with the wharves and the sheds thereon, but if it is important I will get that information for you.

Mr. Graham: May I suggest, would that include—(pause). I was going to suggest that it could include equipment, but it couldn't.

The Witness: No, because equipment comes next.

By Mr. Read:

Q. Mr. Graham, I show you a copy of the Encinal Terminal report to the State Railroad Commission for the calendar year of 1939, page 4, where it shows land and buildings, \$1,303,782.65. Have you any explanation to offer for the difference between that figure and the figure that is shown on Exhibit 142 following "Wharves, Sheds, Etc."?

A. No, I haven't. I don't know what that means.

Q. I take it that your figures cover exactly this same period that is covered in the report to the Railroad Commission.

A. That is right. However, where your figure of land appears that should not be in this report that you have

copied or someone at your request copied. It well may be that that might have been marked out in that original copy. There is no land in that figure of one million and so forth.

Mr. Graham: There is no land that you own?

[fol. 1829] By Mr. Read:

Q. In other words, that figure should really cover wharves, sheds, and so forth.

A. I will tell you what the "Etc." means.

Q. What?

A. Fences, roadways, waterworks system, small buildings, balloon tracks, and a basin bulkhead.

Q. And those are owned entirely by the Encinal Terminals?

A. That is correct.

Q. Mr. Graham, refer to your Exhibit 141, the first line, "Wharfage, Dockage and Tolls, \$329,876.12." Does that amount also include service charges?

A. Certainly, only it is under the heading of "Wharfage." The terminals around the Bay here call "Wharfage" "Service Charges", Mr. Read.

Q. In the second line you show "Storage, Demurrage, Loading, Unloading and Checking, \$130,402.54." What proportion of that amount is actually storage and demurrage, the amount shown in your Exhibit 140?

A. That's right.

Q. The entry further down under "Expenses" reading "Payrolls & Expenses," what are those expenses? Expenses for labor and expenses to employees such as for traveling and so forth?

Mr. Geary: Mr. Read, what is the purpose in asking that [fol. 1830] question? The item specifically speaks for itself and obviously covers exactly what it expresses itself to be.

Mr. Read: I think, Mr. Geary, it is a large amount and—

Mr. Geary: That may be entirely true and it may have a figure of a million dollars in front of it, but that doesn't answer the question that I ask you. I am asking you what is the purpose of the inquiry.

Mr. Read: To find out just what the nature of these expenses is so that we may know whether they are allocable to demurrage.



Mr. Geary: I object upon the ground that it is incompetent, irrelevant and immaterial. Furthermore, the expenses that are allocated to demurrage are indicated in Exhibit 140 specifically.

Mr. Read: You don't need to answer it if you don't want to.

By Mr. Graham:

Q. While we are waiting for counsel maybe I could ask a few questions to save a little time. Will you take a look at Sheet 1, Schedule A, Mr. Graham? Now, you are, of course, familiar with this Exhibit 69 in this docket, which is the preliminary report in Case No. 4090.

A. Uh-hur (affirmative).

[fol. 1831] Q. On pages 135 and 136 and following, the position of Encinal with respect to the land and the sheds is set forth. Has that picture changed any since this preliminary report?

A. No.

Q. I don't want to ask you a lot of questions on it.

A. Our newest building would have been completed prior to the time that Dr. Edwards made his study, so there has been no appreciable change since then.

Q. And the data in respect to ownership of the land and ownership of the sheds and rent from the owner of the land, and so on, is the same?

A. That's correct.

Q. This covers up to January 5, 1945. I don't want to get you confused on this, but I just want to get the record straight. It is the same picture now as it was? Down there at the bottom, that projects the rent.

A. No, no. That was changed in 4090. They set the rent that we could pay. That was copied out of an old lease.

Mr. Scoll: That is the preliminary report you have there, Mr. Graham.

Mr. Graham: That is right. I know it is. I know it is.

By Mr. Graham:

Q. So that the figures contained on this preliminary report [fol. 1832] on page 138 in respect to the rent are not the correct figures?

A. That is correct.

Q. But they are covered by the final report?

A. Yes.

Q. Will you look at that Schedule A, Sheet 1 down at the bottom where it says "Carrying Charges on Land"? As I understood your testimony, it was to the effect that Encinal Terminals as such did not own any of this land?

A. That is correct.

Q. What taxes do you pay on land?

A. The Railroad Commission set up a basis upon which we would pay a certain amount of rent plus the taxes on the land.

Q. And that's the taxes on the land that is owned by Alaska Packers on which your sheds are located?

A. That's right.

Q. And that is what is meant by this entry?

A. That is right.

Q. Will you take the next one, the returns on the land at 7 per cent.

A. That is the amount of rent that we pay, so we must recover that.

Q. So that that really could have been put up above in Line 21, "Rentals paid on land"?

[fol. 1833] A. Yes.

By Mr. Read:

Q. In other words, Mr. Graham, the \$9,518.63 listed as taxes, plus the return of 7 per cent, or \$9,171.78 constitutes the rental?

A. Yes. In other words, the Railroad Commission in 4090 prescribed that you should make a return of 7 per cent plus the taxes on the land.

By Mr. Graham:

Q. If you work that out that will give you the value of the land, won't it?

A. Yes.

By Mr. Read:

Q. Mr. Graham, has the Encinal Terminals placed in the record here any figures to show the ratio of demurrage to total business in terms of tons and in terms of revenue?

Mr. Scoll: That is in the record, Mr. Read. I think it is Exhibit No. 143.

Mr. Read: I haven't a copy of the Exhibit and I would like to have one, please.

Mr. Scoll: I will give you one.

(Whereupon a copy of Exhibit 143 was passed to Mr. Read.)

By Mr. Read:

Q. Is there an exhibit that would show the ratio in terms of revenue?

[fol. 1834] A. No.

Q. Could you furnish such a statement?

Mr. Geary: We could but we won't unless we are ordered to do it by the Commission.

Mr. Read: Mr. Scoll asked for that and we have furnished it.

Examiner Basham: Off the record.

(Remarks outside the record.)

Examiner Basham: Back on the record.

By Mr. Graham:

Q. Mr. Graham, you heard Mr. Ventre's testimony in respect to the application of the rates on wharf demurrage on the daily and period basis. Can you express yourself as to your views on this application?

A. We are not entirely in agreement with the views of Mr. Ventre, we are sorry, because perhaps there is a difference in the types of cargo handled. We feel that there should be a set of rates which would apply after the free time period to apply on certain types of cargo and which would be in the form of a so-called demurrage rate. We also feel—

Q. (Interrupting) Would that be daily or period basis?

A. It's partially daily,—might I say that we have felt that the wharf demurrage rates which have been in effect at San Francisco for over a great many years is one which we might well adopt: First to third day after the free [fol. 1835] time, 2.5 cents a ton per day; fourth to the seventh day, 5 cents a ton per day; and each succeeding day thereafter 10 cents per ton per day, which would allow a period within which the owner of the goods to decide whether or not he wants to take his goods off the dock. Now, that would be in the form of a wharf demurrage or

penalty rate. On the other hand, we feel that there should be a storage rate based upon a period of 30 days with a receiving and delivering charge. We feel that there should not be in this storage rate a per diem basis in view of the fact that on a per diem basis you cannot get returned to you your expenses involved in the handling of your wharf demurrage cargo.

Q. Would you have an election by the cargo owner on the determination as to whether he would be on this semi-period basis, as you have described, or the 30-day storage basis as Mr. Ventre suggested?

A. It would appear to me that your two types of rates would pretty well be straightened out in regard to who would use the two types of rates. In other words, any person who is a regular storage customer of yours would automatically declare his goods to go on a storage basis. On the other hand, if you are thinking of a cargo which merely remains on the dock beyond the free time because of some exigency met by the owner of the goods, then you are discussing a different type of rates. The goods which [fol. 1836] remain on the dock over the free time where the person has no idea of storing them, when the goods are there, could well be handled under these rates of first to third day, and so forth. But your regular storage accounts certainly wouldn't come in on a basis of these lower rates. They would know whether they were going to store or not.

Q. So it does come down to a use of the cargo owner's discretion or his determination as to which basis he is going to leave it on?

A. Well, certain types of cargo—

Q. (Interrupting) Well, that is a fact, is it not?

A. Yes, absolutely.

Q. This suggested, let us call it, "San Francisco basis" would mean that the cargo would be on the daily basis after the seventh day?

A. That is—we had better get together on our free time now.

Q. I mean, after the free time.

A. After the free time, yes.

Q. I am not discussing free time at all; after the free time. You would have two short periods, and then daily basis after the seventh day?

A. That's right.

Q. Now, on the first one to three days you would have a [fol. 1837] per diem rate?

A. Yes.

Q. So that if he left it one day he would pay a per diem rate, if he left it two days he would pay a per diem rate, if he left it three days he would pay a per diem rate, and then the fourth day he would pay a different per diem?

A. That's right. He would go up.

Q. Fifth, sixth and seventh, the same he paid on the fourth?

A. Right.

Q. And then the eighth day and from there on, so long as he stayed there, he would be paying the same per diem?

A. Up until the time he would declare it for storage.

Mr. Graham: That is right. Thank you very much.

By Mr. Read:

Q. On that question, Mr. Graham, do you make any suggestion in line with the question I put to Mr. Ventre about how it would be determined when the goods actually went into the storage period?

A. No, I would rather have you put that question to me.

Q. I am asking you.

A. I perhaps could not remember what you asked Mr. Ventre, so you ask me the question and I'll answer it.

Q. The question was what method you would suggest so that it would be possible to determine without any doubt [fol. 1838] the actual time that the request is made that the goods be placed in storage?

A. I believe that it would be unnecessary to have any hard and fast rules applying to that particular point because it would appear to me that the terminals are in business to make a profit, and if they were to discover some way to chisel, which I believe your question is directed at, they would only be reducing their own revenue. And so if the shipper were to know that his goods were on the dock at these high per diem rates, he would have sense enough to declare the goods for storage, and if he knew that they were going to stay there for a long period of time, certainly there would be no interest on the part of the terminal to change the records around so that they would be on any other basis. So I see no reason of having a hard and fast rule.

Q. Well then if, as you say, it would not be wise for business policy if the terminal is losing money to do a thing like that, would you explain why they are now piling pineapple without a charge when the tariff provides for it?

Mr. Scoll: Whose tariff provides for it? Are you referring to the same provision with respect to the high-piling that you read from?

Mr. Read: I believe it is the Encinal tariff.

Mr. Scoll: I can't see what high-piling on pineapple and absorptions of the cost has to do with the question you [fol. 1839] asked him.

Mr. Read: High-piling, as I take it, constitutes moving. That is, if you move a half of a portion of a pile that you have on your dock so as to conserve half the space, you are moving the cargo.

Mr. Geary: And you are interpreting that to be a movement which is for the benefit of the cargo, which in reality it is not in many instances because it is a movement for the benefit of the terminal operator in order to carry out the purpose for which the terminal is constructed. I think that the basis of the language in the rule which you read "For the benefit of whom concerned" does not merely mean that the "whom concerned" in this situation is the shipper or the consignee. It is construed by these terminals to be the terminal operator.

Mr. Graham: The Witness Ventre testified that opposite.

Mr. Read: All right.

By Mr. Read:

Q. Do you contemplate two rates, one for normal piling and one for high-piling?

A. No. However, there might be one on inbound and one on outbound cargo, as suggested the same as Dr. Edwards proposed.

Q. But it would only be a high-piling rate, is that correct? [fol. 1840] A. I don't understand your question.

Q. Well, Dr. Edwards has one proposal. In one case it is normal piling and in another case high piling. Would you suggest that there be two rates, taking into consideration that the goods high-piled will only occupy, if they double it up, half the space that they take on normal piling?

Mr. Scoll: Are you talking about demurrage or storage now, Mr. Read?



Mr. Read: Well, they are so joined together it is hard to distinguish one for the other. Call them both demurrage and one is a long term demurrage. That is really the proper name for it because it is not a storage business.

A. I still don't understand your question. You will have to read it to me.

(The question referred to was read by the reporter.)

The Witness: Well, of course, your question is so very difficult to answer in view of the fact that I don't believe it takes into consideration what we are discussing. However, in view of the fact that Dr. Edwards proposed two rates, one on inbound and one on outbound—

Mr. Geary. (Interrupting) For high-piling?

The Witness: Two storage rates, that is, two different storage rates and two different receiving and delivering charges.

Mr. Graham: You are talking about canned goods alone? [fol.1841] The Witness: Canned goods alone, we would believe that perhaps we could adopt two bases of rates because of the difference in the handling of inbound cargo as compared with the handling of outbound cargo.

By Mr. Read:

Q. Well, I am talking about cargo in one direction, outbound, and canned goods, which has been the subject here for some time.

A. No, you couldn't have two rates on outbound goods, one applying at your facility, for instance, and one at ours.

Q. I am talking about entirely Encinal, not the Parr.

A. You couldn't have two rates.

Q. Encinal couldn't have two rates, one when the goods are normally piled and the other when they are high piled?

A. That's correct.

Q. Since much of this extra cost in connection with demurrage and storage is attributable to the pineapple and you mentioned a few other commodities, do you see any objection to making a higher rate for the storage of canned pineapple for that reason than you would on other canned goods?

A. You couldn't have a higher rate on canned pineapple than you do on any other commodity.

Q. Why not?

A. Because you couldn't.

[fol. 1842] Q. Why?

A. Because you have other commodities coming in that are handled in the same way as pineapple, and so you would have to have a higher rate on that. It is canned goods still. You couldn't have a higher rate on that than on some other commodities.

Q. If it cost more to handle pineapple than canned peaches, don't you think that is a justification for a higher charge for storing pineapple?

A. No.

Q. Have you ever made a study of the making of rates, Mr. Graham, and particularly transportation rates?

A. No. I haven't had that pleasure.

Examiner Basham: Is that all.

Mr. Read: I think that is all, yes.

By Mr. Graham:

Q. Mr. Graham, I left you up in the air on this application of the so-called "San Francisco rate," that one to three days and four to seven days. I take it that coupled with that application you would be of the opinion that the right or discretion of the terminal to apply other rates, as the San Francisco terminals now do, would have to be eliminated?

A. Yes.

Q. In other words, they couldn't charge the period rate [fol. 1843] or this 1-to-3-day rate and still run? Z

A. No.

Mr. Geary: You are talking about the rates which apply on the general docks rather than the rates which have the period-rates which have heretofore applied on Golden Gate or State Terminals?

The Witness: That's right.

Mr. Graham: Yes, that is right.

Redirect examination.

By Mr. Scoll:

Q. Mr. Graham, does it cost as much to store pineapple that is high-piled as it does to store pineapple that is not high-piled for the same length of time?

A. Well, you have to take two things into consideration. If you high-pile the goods you are then using less floor

space. In other words, if one ton of pineapple will use up 7.4 square feet when not high-piled, then similarly if it is piled to double the height it will use 3.7 square feet. Under those circumstances you then reduce the floor space cost and add to it the cost of high-piling. Over a period of time I believe you will find that high-piling of canned goods, the cost will reduce itself, whereas where it is allowed to remain on the dock at normal height the cost will remain the same.

Mr. Scoll: No further questions from me.

[fol. 1844] Recross-examination.

By Mr. Geary:

Q. Mr. Graham, with respect to the question that was asked of you by Mr. Read concerning a different rate on pineapple, do you have pineapple inbound and outbound?

A. The pineapple moves in both directions.

Q. And you can readily appreciate, or do you agree that if you did have a different rate on those particular movements that the one shipper would be complaining about a preference and a prejudice because it was exactly the same commodity?

A. That is correct.

Q. Your suggestion with respect to the San Francisco basis is to be applicable on both inbound and on outbound movements?

A. Right.

Q. With respect to your actual operations involving high-piling have you had situations occur on your facility where merchandise has been high-piled and the Encinal Terminal has undergone the expense and cost of high-piling only to have that cargo ordered out of the terminal the following day?

A. Yes.

Q. Or certainly within a period within which you could not possibly recoup the cost on demurrage charges that you [fol. 1845] had to outlay in undergoing the high-piling operation?

A. That is correct.

Q. Referring for a moment to Exhibit 140, that Dr. Edwards formula, and I refer specifically to the summary schedule, in Line 14, using the high-piling cost average, is

the only place that you can put in what your high-piling costs were in that Exhibit; is that correct?

A. That is correct. It was only one column. Therefore, you must arrive at the average cost for high-piling.

Q. Which covers both inbound and outbound movement on the Encinal?

A. That's right.

Q. And in one direction your costs are higher than they are in the other?

A. That is right.

Q. Is it possible for you within ten days after the conclusion of this hearing to prepare a statement indicating what your experience was with respect to high-piling inbound in comparison with your costs with regard to high-piling outbound?

A. Yes.

Mr. Geary: May I ask that that be permitted to be made a part of the record in this hearing, Mr. Examiner, and the copies furnished to the parties of record?

Examiner Basham: All right.

[fol. 1846] By Mr. Geary:

Q. When you engage in the high-piling operation over at the Encinal Terminals, is that high-piling operation conducted by hand or by machine?

A. By both.

Q. Have you any statement which you can make with respect to the amount of space which is lost when machine piling is involved in comparison with the hand piling?

A. Based upon studies made we find that when we pile on pallets and with machines there is a loss of approximately 20 per cent as compared with the solid piling by hand.

Q. On Schedule E, Sheet 2, Line 43 you have there a figure of the total tons received on wharf demurrage, the figure being 33,006 tons. Can you state what percentage of that was inbound and what was outbound?

A. 81 per cent inbound and 19 per cent outbound.

Q. You do not feel that a period shorter than a 30-day period is adequate to permit the terminal operator to recoup his expenses for the storage charges?

A. I do not.

Q. And to that 30-day period there should also be carried with it a receiving and a delivering charge?

A. That's right.

Mr. Geary: That's all.

By Mr. Graham:

[fol. 1847] Q. This pineapple that you referred to as being an outbound movement, that is the same pineapple that moved inbound to your terminal?

A. Yes, only some of it might be on storage and others of it might not be on storage.

Mr. Graham: That is all.

By Mr. Read:

Q. I didn't quite understand Mr. Geary's question on that, so I couldn't understand the answer. Just where would the complaint come from that a different charge was being made for the pineapple, the shippers or consignees?

A. Well, certainly, if you had a higher rate on one than on the other the over-all cost to one would be higher than the other, wouldn't it?

Q. Of pineapple?

A. Yes.

Q. What would cause that? I am speaking entirely of pineapple, no other canned goods.

Mr. Geary: Your question was predicated, as I understood it, on pineapple that required high-piling and pineapple which did not require high-piling. You asked if it would be possible to put two rates for that commodity on the same facility. Isn't that correct? Wasn't that the basis of your question?

Mr. Read: I thought your question referred to my question [fol. 1848] about a higher charge for the pineapple than for other canned goods. Yes, that was my question.

By Mr. Read:

Q. If a shipper or consignee of canned goods, though Mr. Graham, had the option of choosing between normal piling and high piling and, having chosen one or the other, do you think he would have any grounds for complaint?

A. I don't think the shipper would be in a position to choose normal piling or high-piling. It is up to the ter-

terminal. Of course, if you were a shipper you would always want normal piling. That has nothing to do with it. The problem is entirely in the hands of the terminal as to whether or not they can give him normal or high-piling.

Q. Oh, then it is to the disadvantage of the terminal rather than the choice of the shipper whether the goods are high-piled or not?

A. Of course it is.

Q. If you had two scales, one for normal piling and another for high-piling, with the lower floor space charge for the high-piling, because of the lesser space occupied in the course of time the rate for the high-piled would become less than that for normal piling, would it not?

Mr. Geary: You are putting in an assumption here on which there is no evidence to support it. If you want to put testimony on to that effect you are privileged to do so.

[fol. 1849] Mr. Read: I am asking him if it isn't a fact. The witness is perfectly familiar with this. He has been in this case for some time.

Mr. Geary: I agree with that and I know that, but he has definitely answered that the thing is not practicable and it is not possible from his operation. If you feel that it is possible to put a rate structure of that character in, you can put a witness on to testify to it. But the witness himself has definitely told you that it can't be done.

Mr. Read: My question is with regard to a complaint that the shipper would make that he paid more for goods high-piled than some other shipper did for goods that were not high-piled. It is not a question of whether he can put the rate in or not, and because of that I asked him whether or not it was the fact that a high-piled rate as time went on would become less than the rate for normal piling if you took into consideration the lower rate because of the conservation of floor space.

Mr. Scoll: He has already testified to that, Mr. Read, in answer to a question of mine.

Mr. Read: What was the answer?

Mr. Scoll: I asked him the same question you are asking and he gave an answer. It is in the record.

[fol. 1850] By Mr. Read:

Q. If that is the case and it is lower, would not the shipper, depending upon the time that he intended to store the



goods, make his choice between the normal piling and the high-piling?

A. I have answered that question.

Q. What was the answer, please?

A. I said that there was no possible way that the shipper would have anything to do about choosing whether he wanted it high-piled or normal. It is up to the terminals entirely.

Q. Refer to Schedule B, Sheet 1, please, line 22, "Checking cargo to or from demurrage, \$3135.57." Does that expense include any checking from or to cars for which the Encinal Terminals was compensated by a railroad?

A. No, it does not.

Mr. Read: That is all.

By Mr. Graham:

Q. Mr. Graham, you have testified in response to Mr. Geary's question that you believed that you lost 20 per cent in cost space area by machine piling. I take it you meant 20 per cent of 60 per cent rather than 20 per cent of 100 per cent, because you lose 40 per cent in aisle space and so on?

A. That is correct. But it should be understood that the answer should be that you lose 20 per cent in space over [fol. 1851] the space which you used by piling by hand and in a solid pile.

Q. So that the ultimate result would be that it would be a net loss of 12 per cent or a total loss of 52 per cent?

A. Yes.

Q. And you would occupy 48 per cent of your area?

A. That is correct.

Q. Have you actually done any measurement to determine that?

A. Yes, we have.

Mr. Graham: No more questions.

Mr. Read: Mr. Geary, Mr. Scoll asked for a list of principal commodities stored. Is the Encinal Terminals submitting that?

Mr. Geary: They are not.

Mr. Scoll: I subsequently withdrew the request and made an explanation of that, Mr. Read. The request likewise was made by another witness after I made my statement

and the Examiner ruled on it and said that he wouldn't ask for it to be produced.

Mr. Read: All right.

Examiner Basham: You are excused, Mr. Graham.

(Witness excused.)

Mr. Scoll: Mr. Differding.

[fol. 1852] T. G. DIFFERDING resumed the stand and testified further as follows:

Direct examination.

By Mr. Scoll:

Q. Mr. Differding, you have been previously sworn?

A. Yes, sir.

Q. Based on your experience and your studies is it your view that a penalty charge should be assessed on cargo which remains over the free time unless the shipper notifies the terminal before the free time expires that the cargo is to be held on wharf storage?

A. Yes, sir.

Q. What is the purpose of assessing wharf demurrage on a penalty basis?

A. For the purpose of clearing the docks and following that, of course, where the facilities permit, of the terminal operator handling cargo under a storage basis which inures to the benefit of the terminal operator, the shipper as well as the steamship operator himself. That is, by attracting cargo to seaboard for subsequent movement by water or prior to subsequent movement by water.

Q. From your studies and experiences is it your opinion that the penalty charge for wharf demurrage should be uniformly assessed by all terminals in the San Francisco Bay area?

[fol. 1853] A. Yes, sir. I think that should be done, and I believe the experience of these operators over many years indicates what happens when you have one operator or more of a group of operators assessing different rates. They ultimately all come down to the lowest possible level. That hasn't been quite true with the San Francisco terminals, but they have endeavored to meet that situation by continuing

with a period basis. But the purpose was to meet the East Bay competition and/or Stockton competition by a period basis of charges for accomplishing the same purpose as the other terminals have met one another's reductions and charges over the years.

Q. Then it would be correct to say, wouldn't it, that there is competition among the San Francisco Bay terminals for this wharf demurrage cargo?

A. It is more than that.

Q. And that competition has been quite severe from your experience?

A. Yes, very keen and severe ever since they have been in operation. That is, as soon as the terminals on the east side of the bay and on the various tributaries of the bay have come into existence, they in turn have competed with each other and with San Francisco, and the tariffs as you find them today are reflecting that competition.

Q. What would happen if one of the terminals on the East [fol. 1854] Bay had a storage or a demurrage rate that was higher than that of the others on the same commodity?

A. Well, he just didn't want the business. That's the only reason he would be there. I haven't found that situation, incidentally, except on a few bulk commodities where one terminal might have a facility and could attract the business and the other terminals did not have the facility and might have had some n. o. s. charge or something else of that sort which would be less than the facility actually handling the goods.

Q. From your studies and observations of this question, can you state whether the relative size of the transit shed of any one terminal as compared with the size of the transit shed of its competitors has any bearing on the establishment of a uniform penalty charge for wharf demurrage?

A. No. It has not had, except that the finger piers of the Board of Harbor Commissioners in San Francisco, where they have had a high penalty basis of charge in effect for many years, and departures therefrom only in instances where bulkhead demurrages have been granted.

Q. Let me ask, should an exception be made in any practice or rule which might be prescribed with respect to penalty demurrage for a terminal which has a larger transit area space than a terminal which has a smaller transit area space?

A. Oh, generally speaking, no. Competition wouldn't [fol. 1855] permit it. They are all after the same business. They are all after demurrage cargo, and any difference in charges whether it is a penalty basis or demurrage basis would affect the flow of traffic.

Q. So that the size of, say, Oakland as compared with the size of Howard has very little to do with the question of whether or not the charge should be assessed on a penalty basis or not, is that correct?

A. That has very little, if any, effect. I haven't observed any.

Q. In your studies in 1935 did you make a study of the operation of the Parr-Richmond Terminal?

A. Yes, sir.

Q. Will you state whether from your studies the operation of the Parr-Richmond Terminal is typical of other San Francisco Bay terminals from the standpoint of wharf demurrage and wharf storage?

A. No, it is not.

Q. Will you explain that?

A. Well, the Parr Terminal has never in its existence presented a typical or average general cargo handling facility, that is, in all trades both inbound and outbound. They have had a considerable volume of business which could be called "General cargo" outbound for some period of time, but relatively speaking it has been a very short [fol. 1856] period of time and, I think, as the witnesses have indicated, it is limited mainly to large movements of packaged petroleum products which move out in large quantities. The territory tributary to Richmond in competition with Stockton and the East Bay and San Francisco terminals has not permitted them to secure a large part of the general cargo movement through San Francisco bay.

Mr. Read: Have not permitted who, Mr. Differding?

The Witness: Has not permitted the Parr Terminal Company to enjoy a very large share of the general cargo movement through San Francisco bay.

By Mr. Scoll:

Q. On page 108 of Exhibit 61 in this record there is a recommendation by Dr. Edwards and yourself that there be a penalty demurrage charge of 5 cents per ton until the shipper declares the goods for storage.

A. Yes, sir.

Q. In making this recommendation did you consider the ability of shippers who use the San Francisco Bay terminals to pay a penalty demurrage charge?

A. Yes, sir.

Q. What did you find?

A. From such studies and investigations that we made we could see no reason why a penalty demurrage charge of 5 cents per ton per day for the purpose of clearing the [fol. 1857] transit sheds of cargo after a period of ten days of free time was allowed in a matter of which we recommended certain reductions in, should be permitted to occupy transit space where the terminal immediately incurs certain fixed costs on that cargo and which he cannot recoup even under 5 cents per ton per day, generally speaking, having in mind where the cargo has to be moved around or in some instances high piled and the fixed charges, as indicated in the Exhibit 61, occur where there is a normal movement of general cargo; and, further, from the fact that a penalty basis has been in effect in San Francisco for many years on the piers handling the vast majority of the cargo and has been assessed.

Q. Is the penalty basis in effect and assessed at other ports on the Pacific Coast?

A. Yes.

Q. Do you know?

A. Yes. That's particularly true in the north Pacific Coast ports. They themselves set up a penalty basis of wharf demurrage charges which are covered in the various exhibits that I previously introduced in this record, and they also have a storage basis which embraces a period of time, plus a receiving or delivery charge or a handling charge.

Q. Then it is your opinion, based on your studies and experience, that the shippers who use these San Francisco Bay terminals are able to pay a penalty demurrage charge, [fol. 1858] is that correct?

A. Yes. They are able to pay a penalty demurrage charge for the few days time generally used in removing or assembling cargo which is in excess of the free time period.

Mr. Graham: You mean a charge of 5 cents, is that it?

The Witness: Yes. That's what was recommended and that's what I have in mind in answering these questions.

By Mr. Scoll:

Q. Then from your experience since 1935 is it your opinion that conditions under which you recommended a penalty charge of 5 cents have in no way changed as to make such an assessment an unreasonable burden on shippers today?

A. No, I do not. I think, under the extraordinary conditions obtaining today in many cases, there may be justification for a higher penalty charge in order to get the cargo out of transit areas.

Q. If wharf demurrage is assessed on a penalty basis would there be a differential between demurrage charges on inbound and outbound cargo?

A. You mean as to penalty?

Q. Yes, as to the amount of the penalty. Should there be one penalty demurrage rate on inbound cargo and another on outbound cargo?

A. In our investigation we found no justification for it [fol. 1859] at that time, and I am not informed at this moment as to justification for it.

Q. You mean, then, that the penalty demurrage rate of 5 cents a day should be the same on inbound as on outbound cargo?

A. Yes. I have in mind the penalty demurrage rate applying to both inbound and outbound.

Q. In your opinion, based again on your studies and experience, is it possible for any terminal in the San Francisco Bay area to nullify the effect of penalty demurrage charges by establishing low wharf storage rates?

A. Well, not if they have the storage rates at a proper level. It depends upon the basis of assessing the storage charges.

Q. Then in your opinion it is necessary to establish wharf storage rates on a basis which will prevent evasion of penalty demurrage charges, is that correct?

A. The nullification of the penalty demurrage charges by the shipper declaring it for storage could be accomplished but at the same time that assures that the storage charges are on a proper level. So the terminal operator would be compensated for the space costs plus the direct and overhead costs that are incurred during the time that the cargo remains on hand.



Q. Then in order to prevent nullification of the penalty [fol. 1860] demurrage is it necessary to establish wharf storage on a period basis?

A. Well, it isn't absolutely necessary, but to compensate the terminal operator for the space provided and at the same time have a charge generally termed a handling or receiving and delivering charge to compensate for the charges or the costs which are immediately attached to the cargo, it is more desirable and, I believe, for both the shipper and the terminal operator, to have it on a period basis. We recommended a 15-day period basis and I have no justification at the moment for altering that recommendation.

Q. And you likewise recommended a handling in and out or receiving charge, did you not?

A. Yes, that is true.

Q. Have you any basis for being of a different mind today? Would you still make such a recommendation today?

A. Yes.

Q. On page 78 of Exhibit 61 there appears a table of densities and pile heights and square feet required per ton for each of the principal commodities stored on wharf demurrage by the San Francisco Bay terminals. Upon what information was that table based?

A. That table was prepared by rather long and detailed studies that I made of the various commodities piled on the San Francisco Bay docks, and by that I mean both sides, and [fol. 1861] using a measuring stick and determining the actual weight of the goods in the various piles of different commodities.

[fol. 1862] Mr. Graham: Don't you mean page 98? I think you said page 78.

The Witness: Yes, it is page 98 of Exhibit 61.

By Mr. Scoll:

Q. Can you state from your experience since the date that this table was prepared whether the data which it sets forth is substantially accurate today?

A. Yes. As far as my knowledge goes the same type of containers and the cubic density are being used, and I know of no departures from the results shown on the table of densities.

Q. Mr. Parr when he was on the stand this morning testified that the fixed charges for the Parr Terminal warehouse area had not changed substantially since 1935. Have you your work papers there that you used in 1935?

A. Yes, sir.

Q. Will you state for the record from those papers what you found to be the square foot values for the Parr Terminal areas devoted to wharf storage for demurrage?

A. Terminal No. 3, the yearly cost was 94 cents per square foot which, when it is adjusted for a 30-day basis, is 7.83 cents per square foot. Terminal No. 1, that is, the facility that is over the water or practically one-half of the total area of that facility, the cost was 98.8 cents per year with a 30-day square foot cost of 8.23 cents. And in the [fol. 1863] so-called back warehouse or the other half of Terminal No. 1 the cost was 42 cents per year or 3.5 cents per square foot per 30 days. The difference in the two parts of that building is because one is over the water and very expensive piling and the other is on filled land and not the same type of construction, one being concrete and the other terra cotta tile.

Q. And the figures which you have just read were based on actual first hand observations and inspection of records which you made?

A. It was a rather long and tedious examination of the records going back ever since these facilities were constructed by the City of Richmond and Mr. Parr and examination made of every expense that was incurred in the facilities, and these figures represent the carrying charges as of 1935 whether the expenditures were made by Mr. Parr and his organization or the City of Richmond.

Q. Do you have the total cost of the structures there?

A. Yes. No, I am sorry to say they were not carried forward on these work sheets that I have here. I will have to call upon Mr. Read who has borrowed those work sheets to get that answer. I can't get at them, I am sorry.

Mr. Scoll: Have you those work sheets with you?

Mr. Read: I haven't them with me.

Mr. Scoll: May we insert in the record that information [fol. 1864] which we can take off of Mr. Differding's work sheets? That is, the total costs of the various structures for which he has given a square foot value?

Mr. Read: That is just the structures of 1 and 3?

Mr. Scoll: Whichever structures Mr. Differding gave square foot values for.

The Witness: 1 and 3.

Mr. Scoll: That will be furnished within ten days and copies to the respondents?

Mr. Read: Yes.

By Mr. Scoll:

Q. Now, Mr. Differding, witnesses for both Parr Terminal and Oakland testified to the effect that they were of the opinion that wharf storage or wharf demurrage, using them to mean the same thing, should be based on an out-of-pocket theory rather than on a basis of cost. Would you comment on the application of the out-of-pocket theory to the wharf demurrage or wharf storage charge?

A. Well, speaking generally, if the users of wharf demurrage space are entitled to rates based upon out-of-pocket costs so are the ship operators in the payment of charges and so are the shippers in the payment of tolls. The answer is that these terminals would all fold up. They can't expend an out-of-pocket theory throughout the entire structure, and, on the other hand, the terminals have all [fol. 1865] raised their tolls, they have adjusted their dock charges and increased their service charges and they so far have left the wharf demurrage operation of their facilities still standing but not carrying its way, which is quite evident from these formulas that have been introduced here.

There are very substantial increases necessary in these charges to compensate the terminals even on a minimum basis, and back in 1933 we found, using the low cost facilities both as to direct and overhead expenses as well as floor space, that a minimum of 33-1/3 per cent increase was necessary and that also took into consideration the reduction in free time which we assumed would result in a 10 per cent increase in the amount of wharf demurrage over the year's operations.

Q. I used the phrase "out-of-pocket theory", and the same thing would apply to any other expression of that accounting theory, such as "added traffic" theory, which presumably sometimes means the same thing?

A. Yes.

Q. And I meant it the same way.

A. Yes. They are all taking a cue out of the railroads' books over the years and it hasn't worked very well for the

railroads and it can't apply to the terminal operation to any degree because they are set in one spot and they have limited traffic to go after and they are not in the position of [fol. 1866] the railroads to be attracting new traffic. If it is attracted it will just be shifted from one around to the other. If they all go down on the same basis, which is inevitable under the competitive situation, they wind up with less revenues and no traffic.

Speaking of costs, it is true that it is only one element, the other ones being what the traffic will bear and, the third, competition.

Q. If the element of competition and the element of what the traffic will bear can be set aside as being equal so that you have only to look at the matter of costs, what in general is the effect of furnishing wharf storage or wharf demurrage at a rate which is not compensatory?

A. Well, the answer generally, I believe, is casting a burden upon the other users of the facilities, which in this case means the vessels and those shippers who have transit cargo and do not take advantage of the wharf demurrage space. Where the charges are on a compensatory basis it permits the terminal operator to meet various situations. By that I mean the contentions of shippers that certain traffic can not pay its way and some relief can be accorded to certain commodities that the steamship companies may desire a reduction in service charges, but when the terminal operator is not being fully compensated for his services he is not in the position of granting very much consideration [fol. 1867] to those requests. And it is also obvious that under these figures shown here, which after all are averages, there are going to be a number of commodities that probably can not stand their full share; and what they can't stand, if the service is going to be on a compensatory basis, must be added to those commodities that can.

Q. Now, Colonel Allin in a statement which he read in part this morning said that the land carriers should be assessed a part of the cost of the operation of the terminal and implied that their share should be reflected in the cost of wharf demurrage or wharf storage. What have you to say about that?

A. Well, I don't recall that he said it should be reflected in wharf demurrage or wharf storage. I believe he was attempting to point out that all users should pay their fair

share, which I heartily agree with, departures being made only for sound justification. But the cost of furnishing facilities especially for trucks or especially for railroad lines is not embraced in wharf demurrage. It is like a lot of other costs that these terminals incur, and revenues they receive are not involved here. There was quite an extended discussion in Exhibit 61 as to the determination of costs for the uses made by railroads and truck carriers of terminal facilities. At that time we made such cost study as was possible and found that under the then existing situation and [fol. 1868] the information and figures available to us that we could not justify any cost or charge, rather, to the truck carriers or the railroad lines presently using the facilities that we had then investigated. Whether the picture has changed today to such an extent as to warrant that, I am not in a position to say. But that is not a matter that is involved here.

Q. Based on the studies which you made in 1935 and what you have ordered about terminal practices in San Francisco Bay since then, when in your opinion should the cargo owner elect between daily and period basis of storage?

A. Well, it was recommended that it should automatically go on storage after the fifth day of the penalty charge unless the shipper had previously indicated that he desired the storage basis. And I see no reason to change that recommendation at this time.

Q. Why was that recommendation made?

A. Well, it is a charge that is almost impossible to police because the numerous people that are involved in referring these requests for the—that would receive these requests for the basis of storage. The shipper in making that request obviously has some idea as to the length of time that he contemplates on having it there. If you had it for a period much longer than five days the shipper would be taking advantage of the terminal operators, I am afraid, in asking that the penalty basis be entirely eliminated and the [fol. 1869] storage basis applied upon the expiration of the free time period, and the longer you have the penalty basis the more reason there is to nullify that by extending the storage basis back to the expiration of the free time period. In any event, if you do not have an automatic storage arrangement the terminal operator is in many cases not compensated for the charges that he has to bear in connection

with the cargo under a penalty charge, and in order to permit the terminal operator to within a reasonable period of time, as we saw it, get sufficient to pay his out-of-pocket costs plus something for space expenses, we believed at that time that after the expiration of five days it should automatically go on to storage.

Q. Now, from your experience and observation of the operations of the San Francisco Bay terminals since the date of the report embodied in Exhibit 61, will you state whether there has been any change in conditions which would warrant a change in the recommendations which were made in that report by you and Dr. Edwards?

A. There may be, but I know of none so controlling as I would recommend a change in what was originally recommended.

Q. So that what you said then is still good today?

A. Yes. I have no information that would lead me to amend or revise those recommendations at this time.

Q. You have kept pretty good touch with the operations [fol. 1870] of the terminals since the date of that report, have you?

A. I think so, without actually working for them.

Q. By the way, Mr. Differding, you are testifying under subpoena here today, are you not?

A. Yes, sir.

Mr. Scoll: That is all.

Cross-examination.

By Mr. Graham:

Q. Mr. Differding, as I understand it, your basis of establishing this demurrage rate is predicated solely on the belief that it should be a penalty?

A. As far as the five cents per ton per day basis is concerned; yes, sir.

Q. That is what I mean.

A. Yes, sir.

Q. I also understand that you would recommend the adoption of the 5-cent rate both in inbound and outbound cargo?

A. Yes, sir.

Q. You appreciate the fact, don't you, that on inbound cargo the terminal is in a position where it may or it need not accept that cargo and, consequently, there is no need



for a penalty to so-called clear the dock? Would that have some influence in your determination that the one rate might be different than the other?

A. Not that, Mr. Graham. Competition doesn't permit [fol. 1871] you to refuse anything.

Q. Well, if you had the same rate at all terminals, which is presumed that this hearing may bring forth, the element of competition would be eliminated, wouldn't it?

A. Well, not in so far as one terminal turning down business. I have never heard of that.

Mr. Scoll: There is another competition besides competition in rate.

Mr. Graham: Yes, I understand that.

By Mr. Graham:

Q. But, in other words, it would be your belief that this 5-cent rate for outbound cargo even though all the terminals apply the same rate, be it lower than the 5 cents, that your docks would still clog up by reason of competition between the docks?

A. Well, no. It is true that a terminal operator can have more influence in regulating the flow of the outbound cargo to the dock than he can from the—than the inbound cargo off the dock.

Q. That is right.

A. He can through his close association with the shippers—he can do that, but if the shipper says that "I am going to send it down there," the terminal operator never says "No."

Q. Then if that is your belief the result is that that 5 cents becomes not a penalty but a revenue rate?

[fol. 1872] A. That is true. However,—

Q. (Interrupting) On outbound cargo?

A. Yes. Well, to the revenue on inbound too.

Q. I understand that.

A. But that isn't the function of the penalty charge.

Q. I understand. But, in other words, it is correct that this charge of 5 cents which you propose is based primarily on the desire to have a penalty?

A. Yes, sir.

Q. And you do recognize, however, that there is a distinction in the situation confronting the terminal as to inbound cargo compared to outbound cargo?

A. Yes. The shipper is in a better position to use his influence in regulating the flow of cargo on the dock than the cargo from the dock.

Q. That is right. So that upon outbound cargo the primary concern of the terminal in accepting the cargo is the revenue that the terminal gets from accepting the cargo?

A. Yes, that is true. But, again, the terminal operator is up against the same problem as he has in the inbound cargo in that large quantities of commodities are received for outbound movement by water, where the terminal operator immediately incurs certain costs which are not compensated for; and unless—and if the cargo should move out in a few days, unless you have a high penalty charge, the terminal operator again suffers the loss which is amply [fol. 1873] illustrated in these formulas here today. They are occurring on all cargo.

Q. I understand that. And is it your opinion that this 5 cents on outbound cargo is to be considered as a compensatory rate to satisfy the costs of the terminal in handling that outbound cargo?

A. Yes, sir. Those costs—for example, square foot costs are exactly the same whichever way the cargo is moving.

Q. That is right.

A. And unless the terminals devise a rate structure which is fair and reasonable and at the same time of such a compensatory nature as to cover all costs, they are going to be just short of whatever the amount necessary is.

Q. But we are agreed, are we not, that the basis for the charge on inbound cargo is different than the basis for the charge on outbound cargo in that on inbound cargo your desire, according to you, is to clear your terminal, where on outbound cargo the terminal has the discretion as to whether it is going to take the cargo or not, but if should get a rate which is compensatory?

A. That is right. He has that discretion, but he can't exercise the discretion.

Q. Why can he not exercise the discretion if the rate in respect to all these terminals as a result of this hearing [fol. 1874] is identical?

A. The point that I have is this: That if the charge is lower than the compensatory charge—

Q. (Interrupting) Now, I am agreeing with you that we have a compensatory charge for outbound cargo for this service.

A. All right. But the only way that the terminal operator can have a permanent deterrent as far as the shipper is concerned against having cargo on hand for a few days beyond the free time period is by having a penalty charge. If the terminal wants to, or if the shipper wants to store it there for a period of time he should be forced to pay a reasonable charge for the use of that facility, and at the present time the whole risk is assumed by the terminal operator and he hopes that he is going to come out whole. Well, the evidence is quite ample five years ago as well as today that he has never come out whole.

Q. I understand all of that. Let me go back to it again. Is it not a fact that the terminal on outbound cargo has it within his power where there is no question of competitive rates, the rates are the same, to accept the cargo or not to accept it? That is a fact, is it not?

A. Oh, he has that.

Q. That is right.

A. But competition doesn't permit him to do it because [fol. 1875] there is always some terminal operator who will accept it, and if the shipper wants it to go down to the dock it is going there and they all know it. It is part of the business.

Q. You are familiar with the rates charged in the Northwest, which were covered by Mr. West's testimony. I think you heard that, did you not?

A. Yes, sir.

Q. Those are different than rates proposed by you, aren't they, not only in amount but also on the basis of application?

A. Yes. I am not quite clear at the moment just what those rates are.

Q. They are 2 cents as distinguished from your 5 cents?

A. Yes.

Q. You heard Mr. West's testimony that both on the rate itself and its application, which is different than your application, they had in practice found satisfactory results. Do I understand that you either don't know enough about the situation in the Northwest or you differ from their view? Now, which is it?

A. No. I have no quarrel with Mr. West's comments at all. I am recommending here what was found five years ago and at the present time I have no information of sufficient or controlling importance to change it.

[fol. 1876] Q. And you don't know any factors which would govern a moment of cargo in the Northwest which are any different than those here, do you? They have the same problems that these terminals have?

A. Generally speaking, yes. But in so far as wharf demurrage alone is concerned and the various elements that go into the matter of costs and revenues, I couldn't say.

Q. You do recognize, don't you Mr. Differding, that there are different facilities afforded in the San Francisco Bay area and that the rule which might apply on a strictly transit pier, such as the San Francisco piers, might not be applicable on other piers or other facilities which have more space available for short term storage?

A. No, not particularly. The costs are there, and if they are handling it in short term storage and they know it as such they don't, for example, encounter high-piling but they spread it over a greater surface of the docks area and, as pointed out, the costs meet each other on a number of these commodities within thirty or forty days.

Q. I understand that. But in that respect it is a fact, isn't it, that your recommendation for 5 cents is based upon the belief that this cargo should be penalized rather than on a determination of what the costs of handling are?

A. No, not at all. We have set up a basis here to cover storage arrangement, and if the cargo is only going to stay [fol. 1877] on hand three or four or five days it is clear, I think, from the formulas that have been submitted that the terminal operators never come out whole on it.

Q. But is it not a fact that the application of the 5-cent rate exceeds the sum which would be necessary in order to satisfy strictly the costs of operation on a particular facility as distinguished from a penalty?

A. Well, if it was run through for any period of time that is true. Generally speaking, there are some exceptions. Some illustrations are found here in this Exhibit 61.

Q. So that if you were concerned with the question of a compensatory rate alone your recommendation, I assume, would be to propose a charge something less than the 5 cents which you have proposed as a penalty charge?

A. No, not without further information than I have today on the subject.

Q. Well, it is your information, is it not, that the 5-cent rate exceeds a compensatory rate?

A. No, not on the average.

Q. Well, it certainly does on outbound cargo.

A. Without breaking down these figures on a daily basis with all the costs incurred I wouldn't say so. That can be determined, I think.

Q. What you mean is that you just don't know, or—

A. (Interrupting) These rates here are set up on a different basis and if you are going to allocate your cargo to one day, two days, three days, over a year's operations and all of the incidental charges such as handling, transferring, high-piling and the rest of it that are incurred, regardless of the fact that the cargo may stay only three or four days or five days at a five-cent per ton per day, the ultimate answer is I haven't that basis worked out. I can't tell you. But for the purpose of a penalty demurrage charge to clear the docks and not take advantage of a very low per diem rate, it appeared to us five years ago that a five-cent per ton per day charge in both directions was fair and reasonable and, as I previously stated, I am not in a position to revise that upon any more recent information.

Q. And you are not in a position to revise in respect to the question of whether that is or is not strictly a compensatory rate?

A. Well,—

Mr. Scoll: (Interrupting) Let me ask you this: You have reviewed the evidence and the exhibits that have been introduced in this case, have you not?

The Witness: Yes.

Mr. Scoll: Have you seen anything in the record of this case so far that would indicate that five cents is more than a compensatory rate?

Mr. Graham: The reason I asked that question is because of the fact that there has been testimony introduced in this case, both at this hearing and in the previous hearing, by actual terminal operators which is slightly at variance with your views on the 5-cent rate.

Mr. Scoll: Those have been statements unsupported by anything more than merely the statement of the operator who made it.

Mr. Geary: Did the witness answer the last question?

Examiner Basham: Read the question, please.

(The question referred to was read by the reporter as above recorded.)

The Witness: No. Their figures, whatever they put in, are like mine. They are largely judgment, and I am quite sure that none of these operators have had time to break these figures down to do that. As a matter of fact, it would require analyzing every ton as to the specific number of days throughout the entire year that remained on hand and then try to analyze those tons for each day back against your costs. Your costs can be broken down, as indicated here, for 365 days of the year or weekly or any period you want. But to state definitely that it is compensatory or not compensatory I think is not possible at this time from the information available to me or any of these operators. [fol. 1880] But I think it more closely approximates being a compensatory charge if it does not exceed it than anything else that you may have.

By Mr. Graham:

Q. So what we finally come down to is the exercise of your judgment and the exercise of the judgment of the witnesses who have testified in other respects?

A. That is right.

Mr. Scoll: It is an analysis of testimony and judgment based upon testimony in the record, isn't that correct?

The Witness: I think it could be stated this way: That my statement with respect to a penalty demurrage charge and that of all the other witnesses who have touched upon it is their best judgment based upon their observations and what study they have given of the costs. That's mine. To accomplish the purposes intended by a penalty wharf demurrage charge, which is to clear the transit sheds and not use the valuable space for periods of time where the revenues under the existing rate structure is not compensatory.

By Mr. Graham:

Q. And if the terminal has sufficient space where there was not the need for clearance as there is, let us say, at the



San Francisco finger piers you would have to, would you not, first determine what your compensatory rate was [fol. 1881] rather than establish this so-called penalty rate?

A. No. At the San Francisco finger piers the penalty basis was from my investigation never adopted or viewed in the light of a revenue producing charge. It was there for the purposes that the word "penalty" implied.

Q. Whereas on some of the other terminals around the Bay, which have more space available, revenue plays an important part in this problem?

A. Yes. Witness the two San Francisco piers No. 45 and 56 and the East Bay terminals. They were built definitely for the handling of cargoes for periods of time, and properly so. Whereas the finger piers are the old type and they are under assignment by a steamship operator who has no interest whatsoever in wharf demurrage cargo and he can't be blamed for that.

Q. As I understand it, Mr. Differding, you are still of the opinion that the rule on Appendix E, I think, covered by the note on Appendix E, should be made applicable and the 15-day period should govern?

A. Yes, I still have that opinion.

Q. Now, is it not a fact that if that were put into effect the shipper who for any reason, either those within or beyond his control, had goods remain on the facility beyond the 5-day period, which I think you suggest, even for one day he would be obligated to the charge for the entire additional [fol. 1882] 14-day period even though not used?

A. Absolutely.

Q. And isn't it a fact that on those facilities, on which you have suggested there is a need for 5-cent penalty rate in order to clear them, that the effect would be just the opposite of what you have suggested should prevail, namely, that the fellow would leave his goods there for 14 days on storage and the facilities wouldn't be cleared at all?

A. Absolutely. That's just what has happened and that is just what the terminal operators apparently built their facilities for, and at the same time they would be compensated for the use of it, which, after all, I think is one of the objectives.

Mr. Scoll: I don't know whether you understood the import of Mr. Graham's question:

Will you read Mr. Graham's question back again and the witness' answer?

(The question and answer referred to were read by the reporter as above recorded.)

Mr. Scoll: As I understand,——

Mr. Graham (Interrupting): Now, just a moment! Please don't lead this witness because I think the witness understands clearly the question I asked him, and I think the answer is responsive to the question I have asked. He [fol. 1883] is an expert witness.

The Witness: I just answered it the best I know how.

By Mr. Graham:

Q. Mr. Differding, going on to that same question, if the purpose is to clear these facilities, which you have suggested it is, a daily rate would be more preferable to a 15-day period rate under those conditions? A "continuation of a daily rate", let us call it.

A. Yes. But the point is that if you are going to break down your period basis to a daily basis plus a receiving and delivering charge, you are going to have more gaps of time in there because you are permitting the shipper again to do on a storage basis, which is adjusted to ordinarily for periods of time to move his cargo in and out as he sees fit.

Q. I don't think you heard my question, or you did not understand it, if you did hear it. I wonder if you would read it again, Mr. Reporter, please.

A. Well, I think I understand your question all right enough. If you didn't get the answer you wanted you will have to reframe it.

Mr. Graham: Read the question will you please, Mr. Reporter?

(The question referred to was read by the reporter.)

[fol. 1884] By Mr. Graham:

Q. That is a fact, is it not, Mr. Differding?

A. (No response.)

Q. Maybe I don't make myself clear.

A. No, the purposes are different. You are now a step beyond the penalty basis to a storage basis and you are being compensated for your fixed costs that ordinarily accrue

when the cargo first hits the dock or after the period of free time, rather, is what it should be. Of course, the ideal situation is for the terminal operators, of course, to have compensation immediately after the expiration of the free time for all the fixed costs that immediately attach itself to each ton of cargo after the expiration of the free time.

Q. Well then,—

A. (Interrupting:) That is not possible, I believe in fairness to the shippers and the consignees involved, because they can not always be in a position of immediately after the expiration of the free time to have their cargo off the dock. They may have removed 50 per cent or 90 per cent of it within the 10 days and have 10 per cent left, and it did not appear fair to us, and I know that it has never appeared fair to any of the terminal operators or numerous other parties that we discussed, that that man should immediately be stuck with the receiving and delivering charge like it is [fol. 1885] in a public warehouse. And for that reason, where that shipper does not go beyond the, or consignee, beyond the 10 days free time he has a penalty charge which is no wise equal to what would happen under a period basis with a receiving and delivering charge. So he does have the privilege of getting it off of there in two, three or four or five days, whatever he may take, and the picture is different. He wants a period of time he can work out the storage basis to fit his problem.

Q. That is by the exercise of his own discretion?

A. I beg your pardon?

Q. That is by the exercise of his own discretion?

A. Yes. After all, he knows his problem.

Q. That is right.

A. The terminal operator doesn't and the terminal operator gets paid for it, not the shipper.

Q. If what we are talking about is a penalty charge to clear the facilities, is it not a fact that continuation of a daily penalty basis would be preferable to a daily basis for a period of days and then automatically go on a period basis? Can we agree on that?

A. Without a receiving and delivering charge, do you say?

Q. What does your rule provide for? I am talking about the application in your rule.

A. Yes. That could be done that way, but you would [fol. 1886] again permit the shipper to be withdrawing the cargo without having an equitable spread of all your space costs over a period of time. You would have bigger gaps in there because the shipper would immediately, if he was just paying a handling charge—he might leave it there five days beyond the payment, if the payment was put on a basis where the receiving and delivering charge is involved, and the terminal operator would have idle space. The cost is there and it has to be recovered somehow. And it may be true, as you say, that the shipper is going to be stuck with a 15-day period basis plus a receiving and delivering charge and would endeavor to leave it there as long as possible. Obviously his costs per ton go down. The next shipment he may have he would pull it out in five days. But when you analyze the situation, as some large storage accounts that we analyzed upon our basis here, we found that those that we did analyze would work out to the shipper's advantage.

Q. Can we agree upon this: That the application of the rule suggested by you would not have the effect of clearing the facility?

A. Well, certainly not when it is on a storage basis because that is what it is designed for and that is why they have accepted it.

Mr. Graham: That is all.

Mr. Scoll: That is on a storage basis as distinguished [fol. 1887] from a penalty demurrage basis?

Mr. Graham: What I am talking about, Mr. Scoll and Mr. Differding, is the application of the rules suggested by Mr. Differding in the Appendix to Exhibit 61, I think it was.

Mr. Geary: That is not an exhibit in this case.

Mr. Graham: No, that is not Exhibit 61. It is the Appendix attached to the decision in case No. 4090.

The Witness: Appendix E?

Mr. Graham: Appendix E, yes. That is what I am talking about.

Mr. Scoll: That rule provides, does it not, for a penalty charge of 5 cents per day for five days? Let me see it, please.

The Witness: Yes, sir.

Mr. Scoll: And thereafter a period storage basis?

The Witness: Unless the shipper declared for storage prior to that passage of five days.

Mr. Scoll: If I understand the answer to your question it was that so long as the cargo is on the period storage basis after the cessation of the penalty storage base and the election by the shipper to keep it on the storage basis, then the period rate does not have the effect of clearing the docks?

[fol: 1888] Mr. Graham: That is right.

The Witness: That's right. It shouldn't have because the shipper is then being charged the rate, or should be charged the appropriate rate, to compensate the terminal operator for the facilities furnished him.

By Mr. Graham:

Q. Just one more question. The exact same result would happen in the event that the shipper had a choice as to the application of the daily so-called penalty rate or period storage rate?

A. Well, that is true, Mr. Graham. After all, it is a matter of degree of refinement here. If you break it down to seven days you again favor the shipper. If you break it down to five days you favor him a little more. If you make it thirty days, why, you favor the terminal operator more. We felt that out of all the suggestions and the cost figures that were confronting us that the 15 days for a storage basis would be as equitable to the terminal operator and to the users of wharf demurrage services as we could develop from our investigation.

Mr. Graham: That is all.

By Mr. Geary:

Q. And if the terminal operator wanted to definitely clear his docks of all cargo he can exercise the rights which he had under his tariff to that at the present time, is that not [fol: 1889] true?

A. Oh, yes.

Q. And if he does that he won't move another pound of cargo presumably for that consignee; he puts the consignee in that particular fix, isn't that likewise true?

A. Yes. They don't have any monopoly on the business and the shippers have many choices and they are not hesitant to do it.

By Mr. Read:

Q. In other words, if the terminal raises the rate high enough there won't be any storage?

A. That is one way of doing it, and the other thing is to refuse to accept it. However, the raising of the penalty rate does not mean that the terminal is foreclosing himself from storage.

Q. I take it, Mr. Differding, that you don't subscribe to the out-of-pocket theory of making rates; that is, a rate that will pay out-of-pocket plus some contribution toward overhead?

A. Not generally speaking. There — cases where that is true, certainly, and they have them in their tariff today.

Q. Are there some cases where you believe in that policy?

A. Yes; where these terminal operators are in a position of sometimes influencing cargo between land carriers and water carriers or where the traffic absolutely will not bear [fol. 1890] any more than that.

Examiner Basham: We will take a short recess.

(A short recess was taken.)

By Mr. Read:

Q. So, Mr. Differding, when the Railroad Commission set the 5 cents per ton per day demurrage rate proposed in the note on page 99 of Appendix E of the Order, did they consider that that rate per day compensated the carriers fully for the expense incurred during the time the goods were on the dock?

Mr. Townsend: Just a moment! I object to that question. This witness does not know what the Railroad Commission thought.

By Mr. Read:

Q. I will ask you if it is your opinion, then?

A. That it was fully compensatory?

Q. Yes, that it fully compensated the terminal operators for the expense they were put to because the goods were left there for, say, one, two, three, four or five days?

A. No. The matter of full compensation for penalty storage was not the objective, and in certain types of cargo



that may be the result. Generally speaking, I don't think it was fully compensatory.

Q. Now, will you look at page—

A. (Interrupting:) Particularly where it is, as here, held [fol. 1891] down to five days.

Q. Will you look at page 102 of the final report, Illustration No. 1?

A. Yes.

Q. There you computed the total cost per ton to the terminal on canned goods not high-piled for a 60-day period?

A. Yes.

Q. What would the cost be for a 30-day period?

A. Well, it is just a matter of calculation.

Q. Would you substitute 9.17 for 18.34 and 52.54, or 26.27 for 52.54 and compute what it would be with a cost of 50.04 per month?

A. 50.04 cents per ton, that's right.

Q. And you arrive at that by dividing by two the 18.34 cents in the fourth line and the 52.54 in the fifth line?

A. That's right.

Q. The other items not changing because they are constant?

A. That's right.

Q. By that same procedure, if you considered thirty days a month and divided 9.17 and 26.27 by 30 you would arrive at the cost per day, would you not?

A. That's right.

Q. And if you did that would not the cost be much less [fol. 1892] than 5 cents per ton per day?

A. It should.

Q. Then the 5 cents does fully compensate the terminal operators for the expense for each day?

A. Oh, no.

Q. Why?

Mr. Graham: I think he already testified that it did compensate him.

Mr. Read: He said that it didn't. He said it was not fully compensatory.

A. Now, you are all putting plenty of construction on my statements.

By Mr. Read:

Q: I will ask you again, Mr. Differding, Did you consider the 5 cents per ton per day described in the note in Appendix E would fully compensate the terminal operator for the costs created by leaving the goods on the dock for the first, second, third, fourth or the fifth day?

A: The answer is, No.

Q: Why?

A: Well, you are trying to compare a specific commodity here with an average penalty charge to apply on everything. The next one you might find—for example, take sanitary napkins—you will probably find it doesn't begin to compensate for you. You picked out canned goods. It probably [fol. 1893] will.

Q: Let us confine it to canned goods, which is the example on page 162.

A: Now, —

Q: (Interrupting:) At 5 cents per ton per day on canned goods would the terminal operator be fully compensated for all expense for each of the first five days that the goods were left on his dock?

A: Based on this specific floor space and answering your figures are right, breaking it back to one day or two days or three days, that may be the answer in this specific case. But you are comparing different things.

Mr. Scoll: What difference does it make whether it is compensatory or not, Mr. Read?

Mr. Read: I want to find out, Mr. Scoll.

Mr. Scoll: He has testified that the rate ought to be on a penalty basis without regard to whether it is compensatory or not, and then on close questioning he said that he thought it possibly might be compensatory in some cases. What difference does it make whether it is compensatory or not?

Mr. Read: It makes this difference, Mr. Scoll: That the formula prescribed by the Commission on the sixth day would make a drastic increase in the storage charge. Now, if the terminal is fully compensated for each day that [fol. 1894] the goods remain on the dock under the 5 cents per ton per day, I want to know what the justification is for a sudden increase in the charge on the sixth day.

The Witness: Well, of course, as I explained a while ago, based upon costs alone the ideal situation is to slap on

your fixed costs right after the expiration of the free time period the first day. And then you have got everything that you are entitled to. Well, I have explained the reasons why we didn't think that was proper, and to us it appeared that five days was a reasonable time for a shipper to remove his cargo from the dock after the free time period on a penalty basis. If he desired something else he should be permitted to store it there at a compensatory storage rate.

By Mr. Read:

Q. Well, now, let us get back again to this illustration No. 1 and stick with canned goods, which is the commodity.

Mr. Scoll: Mr. Read, we can clear this up very simply. We are talking about two things here. One is penalty demurrage and the other is storage. Mr. Differding has stated that it is his view that penalty demurrage is a charge which is assessed with the idea in mind of getting the cargo off the transit space, and that wharf storage is something else, and that is for the use of the space. Now, that is the theory that his testimony has followed. Now, as far as your question [fol. 1895] about raising the storage rate by increasing the present rate to a penalty demurrage rate, that is just what the purpose of the increase is, of course.

Mr. Read: That is not my question at all, Mr. Scoll.

By Mr. Read:

Q. What justification is there, Mr. Differding, for the drastic increase that would result on the sixth day provided that the owner of the goods himself did not request period storage?

A. So the terminal operator would be in a position of getting back his costs.

Q. Well then, we will get back to this question: Does he get his costs at the 5 cents per ton per day on canned goods when you use the calculations in Illustration No. 1 on page 102 of the final report?

A. Well, of course, the answer is that he would not keep it on the penalty basis. He would put it on the storage basis for a period of time, if the recommendations were put into effect.

Q. Who would?

A. The shipper.

Mr. Graham: That isn't the answer to the question.

By Mr. Read:

[fol. 1896] Q. That is not the answer.

A. Maybe I misunderstood you. Would you mind reading it again? I am sorry.

(The question referred to was read by the reporter.)

Mr. Scoll: That has been answered before. Mr. Differding made the statement that there are all sorts of refinements and what they are endeavoring to do is to try to work out an equitable adjustment between the interests of the shipper and the terminal operator, and that that is what the recommendation would produce.

Examiner Basham: Do you object to the question?

Mr. Scoll: He testified to that a half dozen times.

Examiner Basham: Do you object to the question?

Mr. Scoll: Yes, I object.

Examiner Basham: I sustain the objection. Go ahead.

By Mr. Read:

Q. Mr. Differding, I understand in setting up these items of expense to determine the cost of handling goods under demurrage for storage you took certain factors at different terminals using the load factor. I understand, for instance, that your space factor was predicated upon the Howard costs?

A. That's right.

Q. And that your working expense was calculated on the [fol. 1897] performance at the Encinal Terminals?

The Witness: Will you read that last question?

(The question referred to was read by the reporter.)

Mr. Townsend: I want to object to this line of questioning. Isn't that all set forth in an exhibit in this case in your report?

The Witness: That is. The lowest cost figures are set forth, but the report itself does not state who the terminal operators were. But this has all been stated in the previous hearing.

Mr. Read: All right.

By Mr. Read:

Q. Did you make a calculation at the Parr Terminal to determine what the cost was at that particular terminal

for clerking goods when they went into storage or were under demurrage, and did you determine whether they rehandled goods or moved them from place to place on the terminal when they remained beyond the free time?

A. Well, the answer is this: Parr Terminal is not a typical picture of a general cargo terminal. Whatever we found at Parr Terminal could not be used as that which would apply where a normal operation was occurring. The point is that what business they were doing at the Parr Terminal in 1935 resulted in a loss for the wharf demurrage alone of ten thousand, nine hundred and some odd dollars. [fol. 1898] And I think you have already produced an exhibit here showing what the revenues were. I don't recall it, whether you introduced an exhibit showing the tonnage at that time. But the costs for space at Parr Terminal are so high that, while I haven't the calculations all worked out here, you offset what you may save in the lack of checking or not having so much overhead expenses both fixed and variable as these other terminals. So you are saving as the latter is wiped out by the former, that is, namely, the space costs and you don't present a typical picture. Certainly, if costs were applied in the Parr Terminal operation, why, you just wouldn't have any business. Nobody would be there to pay them.

Q. You mean to say, then, that through the past five years Mr. Parr has been losing money in operating his terminal?

A. I am talking about costs to Mr. Parr and the City of Richmond.

Q. Well, Mr. Parr is the terminal operator. He is the man who has the money invested.

Mr. Scott: I object to that. We are talking about wharf demurrage.

Mr. Geary: I object.

Examiner Basham: Sustained. Off the record.

(Remarks outside the record.)

Examiner Basham: Back on the record.

[fol. 1899] By Mr. Read:

Q. Mr. Differding, if the Parr Terminal is losing money for demurrage and storage services under the present rates and an increase is made in those rates which causes this storage and demurrage to cease and Mr. Parr continues

rendering the other services, would he be better off or worse off?

Mr. Geary: What difference does that make?

A. I think the answer is obvious.

Mr. Geary: Just a moment, Mr. Differding. I object to the question. Obviously the thing is a self-answering question and it is something that he can use if he wants to until the cows come home in his brief.

Examiner Basham: Sustained.

Mr. Read: That is all.

Mr. Townsend: I have one question.

By Mr. Townsend:

Q. Mr. Differding, you stated earlier in your direct examination that the various terminals on the San Francisco Bay are in competition with each other. You failed to mention Stockton. Would you say that the Port of Stockton and the various San Francisco Bay Terminals are in competition with each other in the various terminal activities?

A. On a considerable amount of the traffic involved, yes; [fol. 1900] just as keen as the terminals here.

Mr. Townsend: Thank you.

The Witness: That is, as between themselves.

Mr. Townsend: That is all.

Redirect examination.

By Mr. Scoll:

Q. Mr. Differding, based on the exhibits showing costs which have been introduced in this record and the testimony which you heard on competition and other factors that affect wharf demurrage or wharf storage, is it your opinion that the wharf demurrage or storage charges, whichever they may be called, which are now made by the respondents in this case are too low and should be increased?

A. Yes, sir. I think they should be increased to a compensatory level wherever possible, and where that can not be done there should be justifications for it. That is based upon the fact that these operators have called upon all



other users of their service to pay to the best of their ability, and I think the same thing is true of those who are using wharf demurrage services. One of the prime justifications for that is to avoid casting further burdens on other traffic.

Q. Has there been any testimony introduced in this record up to now which would lead you to make different recommendations concerning wharf demurrage and wharf [fol. 1901] storage than were made in your final report and subsequently incorporated in the decision of the California Railroad Commission?

Mr. Jones: Mr. Examiner, I want to object to that question. That purely arrogates to this witness the determination of the entire issue before the Commission.

Mr. Graham: I would like to join in that objection.

Examiner Basham: Overruled. I think the question has been answered, though.

Mr. Geary: Answer it.

A. My remarks would be the same if they were made today except that the various items shown for the specific commodities would be adjusted to fit these costs and further consideration given to such changes in competitive conditions or other factors which may have entered the picture during the intervening five years.

By Mr. Scoll:

Q. What competitive factors do you have reference to?

A. Well, principally, as far as competition is concerned, water transportation versus rail transportation. And I should have added any changes in what the traffic could bear.

Q. Have you any testimony to offer with respect to either of those factors?

A. No. I have no information that would justify me in [fol. 1902] recommending to the Commission at this time.

Mr. Scoll: That is all.

Recross-examination.

By Mr. Read:

Q. One more question, Mr. Differding, you heard Mr. Engel's testimony with regard to the petroleum products?

A. Yes, sir. I am quite aware of that situation.

Q. The conditions under which the cargoes happen to remain on the docks?

A. Yes, sir.

Q. For that reason and considering the amount of the tonnage do you or do you not think that a penalty of 5 cents per ton per day would be a pretty severe penalty?

A. Yes. I know it would be and, as I have inferred at least if not directly stated, this is the average and general picture as we found it. Now, there are exceptions to everything, and I grant you very gladly the exception on petroleum products. I am thoroughly familiar with the handling of it and I see no reason why you should not receive special consideration on that.

Mr. Read: That is all.

Examiner Basham: If there is nothing further you are excused, Mr. Differding.

(Witness excused.)

Mr. Scoll: Mr. Examiner, I believe that finishes the [fol. 1903] testimony that I have to offer. I don't know whether the Respondents have any additional testimony to offer in this proceeding or not.

Examiner Basham: Is there any further testimony to be offered?

(No response.)

Mr. Scoll: And I would like to state for the record that the Respondents have been most cooperative in going to the trouble of making statements and working up schedules from the records in the short time that was available, and I want the record to show my appreciation for that cooperation. Also I would like the record to show that on or about October 31st I shall prepare and serve on the Respondents a request for findings and rulings of law. That is, I will prepare such a request for the Commission and serve Respondents with copies in order to set the issues in the case and make it a little easier to prepare briefs.

Mr. Jones: For the purposes of the record I would like at this time to move you that the Commission dismiss this proceeding as to the Respondent Board of Port Commissioners of the City of Oakland.

Examiner Basham: The motion is denied.

Mr. Kilkenny: Mr. Examiner, I now move that this proceeding be dismissed as to the State of California and the [fol. 1904] Board of State Harbor Commissioners for San Francisco Harbor, Respondents herein.

Examiner Basham: Both motions are denied.

(Remarks outside the record.)

Examiner Basham: Briefs will be due November 20.

The hearing is closed.

(Whereupon, at 6:55 P. M., October 9, 1940, the hearing in the above-entitled matter was closed.)

(Here follows 1 photolithograph, side folio 1905.)

FORM No. 28

PETITIONERS' EXHIBIT No. 3  
EXHIBIT No. 1

BOARD OF STATE HARBOR COMMISSIONERS  
FOR SAN FRANCISCO HARBOR  
SAN FRANCISCO, CALIFORNIA

ASSIGNMENT OF SPACE

No.

Date

To

Address

Kind of privilege

Location

CLASSIFICATION

- 1—Foreign . . . . .  
2—Intercoastal . . . . .  
3—Inland waterways . . . . .

- 4—Coastwise . . . . .  
5—General office space . . . . .  
6—Ferry slips . . . . .  
7—Concessions . . . . .

- 8—Land or seawall lots . . . . .  
9—Weighers' licenses . . . . .  
10—Rights of way . . . . .

Description of space assigned

Monthly rental

Beginning date of rental charges

Special conditions:

Total amount of monthly rental \$

To

Address

Kind of privilege

Location

CLASSIFICATION

- 1—Foreign . . . . .  
2—Intercoastal . . . . .  
3—Inland waterways . . . . .

- 4—Coastwise . . . . .  
5—General office space . . . . .  
6—Ferry slips . . . . .  
7—Concessions . . . . .

- 8—Land or seawall lots . . . . .  
9—Weighers' licenses . . . . .  
10—Rights of way . . . . .

Description of space assigned

Monthly rental

Beginning date of rental charges

Special conditions:

Total amount of monthly rental \$

The above space is situate on property belonging to the State of California, and this assignment of space is made pursuant to Part 1, Division VI of the Harbors and Navigation Code, and other statutes applicable thereto, and for a period of time no longer than may be terminable upon thirty days previous notice to the party using said space. The said assignment of space is of a personal nature and no subletting or transferring of any privileges granted thereunder, will be permitted without the written consent of the Board of State Harbor Commissioners for San Francisco Harbor.

The foregoing assignment of space is a revocable license to use the same. The said license is revocable at the pleasure of the Board of State Harbor Commissioners for San Francisco Harbor. Payment of the above mentioned rental in advance is a condition precedent to the continuance of this license and the same may be revoked forthwith at any time when the payment of said rental is in default. When the payment of said rental is not in default, said license may be revoked at any time, said revocation, however, to be effective thirty days after notice in writing thereof.

Any and all fixtures and improvements constructed, or installed in or about the above assigned space, shall belong to and remain the property of the State of California, and no alterations or removal thereof shall be permitted without the written consent of the Board of State Harbor Commissioners for San Francisco Harbor.

BOARD OF STATE HARBOR COMMISSIONERS  
FOR SAN FRANCISCO HARBOR

Secretary

The above assignment of space and revocable license is hereby accepted upon the terms and conditions hereinabove set forth, all of which are known to, and understood and accepted by the undersigned.

[DATED] \_\_\_\_\_

[fol. 1906]

Board of State Harbor Commissioners for San Francisco Harbor  
Pier and Wharf Area Assigned for Shipping

Statement of Pier and Wharf Assignments in Effect as of January 24, 1940

Pier No.	Tenant	Total area square feet	Total amount monthly rental
1	Bay and River Navigation Co.	105,352	\$1,308.98
3	California Transportation Co.	78,868	1,125.86
5	Bay Cities Transportation Co.	15,926	197.20
5	Leslie Salt Co.	6,475	79.95
5	Napa Navigation & Transportation Co.	6,250	86.04
7	Berkeley Transportation Co.	12,024	152.59
7	Marine Service Corporation	12,737	164.02
7	Petaluma and Santa Rosa RR Co.	24,645	295.25
7	Way's Redwood Empire Freight Lines	3,060	43.14
9	Coastwise Line	61,646	759.28
15	Sudden and Christenson	134,553	859.29
17	Alameda Transportation Co.	3,567	45.36
17	Crowley Launch & Tugboat Co.	13,714	170.51
17	Del Monte Fishing Co.	4,791	77.11
19	Pacific Oriental Terminal Co.	130,657	806.14
23	Pacific Oriental Terminal Co.	126,375	778.11
23	Associated Terminal Co.	11,586	75.00
25	Nippon Yusen Kaisha	105,621	688.73
25	Shipowners and Merchants Tug Co.	1,889	430.00
29	Luckenbach Steamship Co.	215,113	1,482.92
31	Luckenbach Steamship Co.	129,492	994.28
33	Furness Pacific and Holland America Line	67,398	404.39
33	Union Steamship Co. of New Zealand	67,542	434.77
35	Grace Line, Inc. (a/c Panama Pacific)	261,149	1,907.11
35	Grace Line, Inc. (a/c Coastwise Line)	1,996	59.88
35	Grace Line, Inc.	1,833	65.99
[fol. 1907]			
37	Grace Line, Inc.	208,177	1,307.77
39	Williams Dimond & Co.	446,244	1,021.74
41	General Steamship Corp., Ltd.	215,027	1,382.23
45	Geo. Romer and Day McCrone	792	33.26
14	Crowley Launch and Tugboat Co.	2,466	151.18
14	Harbor Tug & Barge Co.	1,433	107.86
16	Consolidated Olympic Line	52,079	641.29
18	Hammond Shipping Co.	102,088	1,246.36
20	Harry Johnson Launch Co.	368	30.00
24	American-Hawaiian Steamship Co.	124,771	820.94
26	American-Hawaiian Steamship Co.	182,117	1,362.39
28	American-Hawaiian Steamship Co.	102,928	744.51
30	Matson Navigation Co.	226,934	1,942.76
32	Matson Navigation Co.	190,721	1,516.03
34	Norton Lilly & Co.	94,236	644.04
36	Kingsley Co. of California	42,620	289.02
38	McCormick Steamship Co.	165,219	1,304.15
40	McCormick Steamship Co.	153,668	1,996.76
42	American President Lines, Ltd.	139,232	994.85
44	American President Lines, Ltd.	240,834	1,463.92
46	American President Lines, Ltd.	86,396	566.58
48	Balfour, Guthrie & Co., Ltd.	65,116	398.23
48	Calmar Steamship Corp.	119,557	739.13
48	Swayne & Hoyt, Ltd.	66,899	451.70
54	Wilbur-Ellis Co.	86,000	375.00
56	State Terminal Co., Ltd.	2,467	80.09
58	Rolando Lumber Co.	17,880	100.00
62	Thiemann & Johnston Launch & Tgbt Co.	180	15.00
64	Loop Lumber Co.	18,600	60.00
64	Richfield Oil Corp.	12,262	147.15



[fol. 1908]

Board of State Harbor Commissioners for San Francisco Harbor  
Pier and Wharf Area Assigned for Shipping

Statement of Pier and Wharf Assignments in Effect as of January 24, 1940

Pier No.	Tenant	Total area square feet	Total amount monthly rental
64	Standard Oil Co.	11,338	147 06
64	Tidewater Associated Oil Co.	11,338	147 06
66	Loop Lumber Co.	125,000	380 00
66	Union Oil Co.	11,536	221 45
70	Columbia Steel Co.	80,563	402 81
86	Shell Oil Co.	1,215	20 00
90	Islais Creek Grain Terminal Corp.	7,041	250 00
		<hr/> 4,719,601	<hr/> \$36,994 22

(Here follow 3 photolithographs, side folios 1909, 1910, 1911)

# RECEIPT

## STATE TERMINAL CO., LTD.

Incorporated under the laws of California

BEFORE THE U. S. MARITIME COMMISSION

Main Office, 901 Third Street, San Francisco, Calif.

Phone SUtter 3210

DOCKET NO. 555EXHIBIT NO. 2

193

WITNESS

FISHER &amp; ASSOCIATES, INC.

SPECIAL REPRESENTATIVE

This is to Certify, that this Company has received in Storage Warehouse

BY

for the account of

Ex

in apparent good order, except as noted hereon (contents, condition and quality unknown) the following described property, subject to all the terms and conditions contained herein and on the reverse hereof, such property to be delivered to \_\_\_\_\_ order, upon the payment of all storage, handling and other charges and the surrender of this Receipt properly endorsed.

NUMBER

PACKAGES

SAID TO BE OR CONTAIN

MARKS

**NON-NEGOTIABLE**  
**DUPLICATE—For Reference Only**

Lot

\*Storage \_\_\_\_\_ per \_\_\_\_\_ per \_\_\_\_\_

on \_\_\_\_\_ 193

\*Handling \_\_\_\_\_ per \_\_\_\_\_ in and out inclusive.

Advances have been made and liability incurred on such goods in the amount of \$

### STATE TERMINAL CO., LTD.

claims a lien for all lawful charges for storage and preservation of the goods, also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooping, and other charges and expenses, in relation to such goods.

\*Rates for storage and handling charges are established by the Board of State Harbor Commissioners and this company's published Tariffs filed with the Railroad Commission of California and in our office.

THIS RECEIPT IS VALID ONLY WHEN SIGNED BY ONE OF THIS COMPANY'S DULY AUTHORIZED OFFICERS

## NON NEGOTIABLE RECEIPT

DEPOSITOR'S No.  
LotNo.  
Issued 19

## GOLDEN GATE TERMINALS

PIER 45, SAN FRANCISCO, CALIFORNIA

HAS RECEIVED in storage at the above location Shed , ex.

for the account of and to be delivered

to said depositor, the goods described below, in apparent good order except as noted hereon (contents, condition and quality unknown) to be held subject to all the terms and conditions specified herein and on the reverse hereof, redelivery to be also conditional upon payment of all storage, handling and other proper charges and surrender of this receipt duly endorsed for discharge.

## DESCRIPTION OF GOODS OR PACKAGES CONTAINING THEM

QUANTITY	MAKE-UP	SAID TO BE OR CONTAIN	MARKS
		<p>BEFORE THE U. S. MARITIME COMMISSION</p> <p>DOCKET NO. 555</p> <p>EXHIBIT NO. 4</p> <p>WITNESSES</p> <p>EE FISHER &amp; ASSOCIATES INC.</p> <p>OFFICIAL RECEIPT</p> <p>BY <i>Conklin</i></p>	

# GOLDEN GATE TERMINALS

PIER 45, SAN FRANCISCO, CALIFORNIA

HAS RECEIVED in storage at the above location Shed , ex.

for the account of and to be delivered

to said depositor, the goods described below, in apparent good order except as noted hereon (contents, condition and quality unknown) to be held subject to all the terms and conditions specified herein and on the reverse hereof, redelivery to be also conditional upon payment of all storage, handling and other proper charges and surrender of this receipt duly endorsed for discharge.

## DESCRIPTION OF GOODS OR PACKAGES CONTAINING THEM

QUANTITY	MAKE UP	SAID TO BE OR CONTAIN	MARKS
<p>BEFORE THE U. S. MARITIME COMMISSION</p> <p>DOCKET NO. 555</p> <p>EXHIBIT NO. 4</p> <p>WITNESSES</p> <p>EE FISHER &amp; ASSOCIATES INC.</p> <p>OFFICIAL RECEIPT</p> <p>BY <i>Conklin</i></p>			

Storage rate\* per per  
from 19

Handling charges\* per  
and out both inclusive.

This receipt is valid only when signed by one of the  
Terminals' authorized agents. Manifold copies hereof  
are for memorandum use only.

Advances made \$

Liabilities incurred for

for which, whether or not the precise amount is known  
at this date, Golden Gate Terminals claims a lien, as  
well as for all other proper charges and expenses  
hereafter incurred relative to said goods.

GOLDEN GATE TERMINALS

By

\* Rates for storage and for handling charges respectively are fixed and established by the Board of State Harbor Commissioners and on file at the Ferry Building and by the Terminals' published tariffs filed with the Railroad Commission of California and open for inspection in the office of the Terminals.

**(REVERSE OF ORIGINAL RECEIPT)**

**Golden Gate Terminals are hereby discharged under this receipt for the following goods redelivered, any unreleased balance remaining, however, subject to lien for unpaid charges and advances on the entire lot originally stored.**

DATE	ORDER NO.	QUANTITY RELEASED	BALANCE	SIGNATURE
		ENTIRE LOT RECEIVED	NONE	

**GENERAL TERMS AND CONDITIONS**

Rates are subject to limited liability as well as to other rules and regulations provided and contained in the tariffs on file.

Rates do not include fire or other insurance and the Terminals do not arrange for insurance except when and as so instructed in writing.

The Terminals are not responsible for loss or damage caused by fire (from any cause), climatic or weather conditions, riots, strikes, insurrection, nor from inherent or perishable qualities of the goods stored, nor from other causes beyond the Terminals' control, nor for loss or damage caused by leakage, pilferage, theft, vermin or water, unless such loss or damage be caused by the failure of the Terminals to exercise the ordinary care and diligence provided by law.

Goods in bonded warehouse are subject to all federal government regulations, and cannot be delivered without authority of the U. S. Collector of Customs.

No delivery of goods covered hereby will be made except on presentation of this receipt duly endorsed, and in cases of partial delivery accompanied by written order.



[fol. 1912]

## EXHIBIT No. 5

## AGREEMENT

This agreement made this 1st day of March, 1932, by and between the Board of Port Commissioners, acting for the City of Oakland, a municipal corporation, herein termed the "Board" and McCormick Steamship Company, a corporation, herein termed the "Steamship Company".

Witnesseth: In consideration of the premises herein, it is mutually promised, covenanted and agreed as follows:

(1) The Board of Port Commissioners hereby sets aside to the said steamship company, for a period of time no longer than may be terminable upon thirty (30) days previous notice to said company, the privilege to use and occupy for the purposes hereinafter mentioned, the southwesterly one-half of the floor area of the Ninth Avenue Pier Shed of the City of Oakland, together with the adjacent front and rear platforms (but not including berthing space), the exact location of such shed space in said pier shed and on said platforms which the steamship company shall be permitted to use pursuant to this agreement to be designated by painted lines on said floor by the Port Manager of said board.

(2) The steamship company shall use said pier shed space and adjacent rear and front platforms exclusively for the purposes of carrying on its steamship operations in receiving, handling and dispatching cargo transported by such vessels as it shall own and control, or by vessels for which at the date of this agreement it is the regularly constituted shipping agent, it being provided, however, that in the event that the steamship company shall desire to use any part of said space for the handling of the cargo of any other vessel or steamship line which it shall become the agent therefor, it shall so advise the board in writing of such intention and exhibit to the board such evidence as shall be necessary to establish such agency; provided, however, the [fol. 1913] steamship company shall not engage in competition with the Port of Oakland to take over any of the business it may control or handle.

(3) In the handling of any tonnage on said pier space, the steamship company shall hire and maintain its own crew of dock clerks, checkers and other necessary help and such tackle, gear and appliances as it may require, it being agreed



that the schedule of rates and charges regularly prescribed by the tariff adopted by the said board shall be so modified that no rates or charges shall be assessed by the Board against the steamship company for checking such tonnage, issuing receipts of manifests, car loading or unloading, stenciling or other services which the said steamship company may perform in connection with the handling of any tonnage transported by it through, in or over said pier space.

(4) In carrying on its operations upon said pier, the said steamship company shall assess and collect charges for all services performed by it at the same rates and charges as are prescribed from time to time by the regularly adopted tariff published by the said board. Said company shall, in good faith, collect said charges from all shippers and others with whom it shall carry on its business. Nevertheless, nothing in this agreement shall be understood or construed to constitute said steamship company as terminal operators.

(5) The privilege herein granted to the steamship company by said board is a revocable license to use said pier space and is not a lease or assignment and shall continue from month to month (until terminated as hereinafter provided); it being expressly understood that the said license is herein granted by the said board as an expediency to bring the said Ninth Avenue Pier into more intensive use a harbor facility of the Port of Oakland, and that whenever the Board of Port Commissioners shall, in its discretion, determine that it shall be to the advantage of the Port of Oakland or in the interest of the public, or be required for other use, that such permission or license shall be terminated, the company will, upon the receipt of notice as herein provided, promptly vacate said pier and remove its equipment, cargo, and employees therefrom.

[fol. 1914] This agreement, and the privilege therein granted, may be terminated at any time by either party first giving to the other party thirty days' notice in writing of the intention to so terminate the same.

(6) The steamship company shall pay to the city at the close of each month, during which this agreement shall continue in effect, for such privilege a monthly charge based upon the proportion of the coastwise and offshore tonnage brought into said Ninth Avenue Pier Shed or placed on, or

moved over the open platforms thereof during such preceding month by such company or its agents or under its direction, whether such tonnage shall be brought into said pier by water, rail, truck or otherwise, together with the other charges herein provided.

(7) Such monthly charge for the use of the said pier space (the whole area covered by this license being fifty-six thousand, six hundred thirty-four (56,634) square feet) shall be at the rate of one and two tenths (1.2) cents per square foot per month for coastwise cargo and six-tenths (.6) cents per square foot per month for offshore cargo, which shall be paid in proportion to the amount of the said two classes of tonnage handled through the portion of the pier sheds in use by the second party, or by the second party directly between car, truck or barge and vessel, (exclusive of lumber and lumber products), accordingly, as the terms "coastwise and offshore" are defined by the tariff of the Port of Oakland as adopted by the Board of Port Commissioners.

In this connection it is agreed that the minimum charge per month for such pier shed space and adjacent front and rear platforms at the rate of six-tenths (.6) cents per square foot for said fifty-six thousand, six hundred thirty-four (56,634) square feet is Three Hundred Thirty-Nine and 80/100 Dollars (\$339.80).

It is understood that in all cases lumber and lumber products as defined by the said tariff adopted by the said Board shall be governed by the charges, provisions and regulations of the said tariff and the charges therefor paid to the first party when due.

(8) In the event the steamship company shall require, from time to time, any additional space upon said pier, including the open dock, for its operations, exclusive of the handling of lumber, it shall make application therefor to the Port Manager or the officer of the port in charge of said Ninth Avenue Pier, who shall designate such space, if any, as may be available for such assignment. Such additional space shall be paid for by the company on a daily basis, the rate therefor per square foot per day to be computed upon the rate of six-tenths (.6) cents per square foot per month for offshore cargo and one and two-tenths (1.2) cents per square foot per month for coastwise cargo calculated on a thirty-day month basis, together with the other charges herein provided for; provided no ad-

ditional space shall be allotted to the company unless the space previously allotted to it at the time of application is in use by it to reasonable full capacity, and provided further the Board may, in its discretion, at any time refuse to allow the company the use of additional space.

(9) The allotment of space herein granted shall not be exclusive, and whenever said space, or any part thereof, is not required for the use of the steamship company for the purposes herein specified, the Board shall have the right to and may permit others to use the same in such manner as not to interfere with the business of the steamship company, under such rules and regulations as may be prescribed by the Board or otherwise by law.

(10) In addition to the payment by the steamship company of the foregoing monthly and daily charges on a square foot basis, the steamship company shall pay to the Board, when due, any and all dockage and tolls incurred by any ships docking at said pier under its direction or by any cargoes or goods brought on to said pier by the company, as well as any other charges it may incur or cause to be incurred at the rates and in the manner as may be prescribed by the schedule of rates and charges set forth in the tariff of the Port of Oakland, as adopted or amended from time to time by the said Board of Port Commissioners.

(11) In addition thereto also, such office space available in said pier as shall be occupied by such steamship company shall be paid for by it at the rate of eight cents (8c) per square foot per month. Office rental shall include light and [fol. 1916] heat to be supplied by the city. Checker's office space shall be paid for at the rate of three cents (3c) per square foot per month.

(12) Furthermore, the steamship company shall, at the close of each month, reimburse the Board for the cost of furnishing light and power to the pier, exclusive of office space, for its uses as per meter reading or as otherwise agreed.

(13) The City shall provide night watchman services for the said pier shed and platforms. Such watchmen shall be employees of the Board, who shall be appointed as provided by the city charter, and shall perform their duties under the direction of the Board. The said steamship company

shall each month also reimburse the Board for one-half of the cost of such service to the city, provided that in the event the Board shall hereafter determine that the company shall pay a greater proportion of such costs a supplemental agreement shall be entered into.

(14) All water used by the steamship company for use of vessels shall be paid for by it at the meter rates established by the tariff of the said city of Oakland.

(15) The steamship company shall provide and maintain, at its own expense, all telephone and other utility service, not herein otherwise provided for, as may be required by it in its steamship operations.

(16) The Board shall, at all times, maintain, at its own expense, an officer who shall be in charge of said Ninth Avenue Pier and all terminal and storage operations carried on therein, and shall have general supervision over the operations of the steamship company upon said pier. Said Board may likewise, at its own expense, employ such additional force as may be required for its terminal and storage operations, it being expressly understood that nothing in this agreement shall interfere with the right of the Board to maintain and operate all such portions of said Ninth Avenue Pier, as shall not be subject to the use of the steamship company hereunder, as a public terminal or to permit others to use it for the receipt, storage, handling and dispatch of cargo.

[fol. 1917] To this end, the Board, or any person or firm with whom it may do business, shall at all times have a free and reasonable right of passage for the movement of cargo or other goods or equipment through and over any space occupied by the steamship company, and said steamship company shall not pile any cargo, or other property, in the passageways, or otherwise interfere with any terminal operations of said Board on the said pier or with any operations carried on under its direction or permission.

(17) All cargo brought onto the said pier or placed in the shed by the steamship company (whether on the space allotted to said company or elsewhere) shall be subject to storage or demurrage charges, after the free time period, as provided for in the tariff of rates and charges as

adopted by the Board of Port Commissioners, which storage charges understood to be in the nature of additional rent for the space so assigned or allotted. Whenever any such cargo is to be held in storage, the steamship company shall advise the officers of the Port of Oakland in charge of such pier of the number of packages, weight and nature of such cargo, and shall furnish such further information as may be required and prepare the receipt therefor if required by the Board. Such officer shall thereupon sign the receipts for such cargo to the steamship company. When such cargo is to be delivered to the owner thereof, the steamship companies shall make such deliveries and shall assume all the responsibility and expense which may be connected with the checking out of such cargo and the delivery of the same, (it having personally checked the said cargo unto said pier and supervised the piling or handling of the same upon its arrival), and shall hold the Board and City of Oakland free and harmless from all claims on account of errors in checking the cargo in or out, or for damage in handling or piling the cargo. Upon such cargo being released from such storage or demurrage, [fol. 1918] the steamship company shall furnish to the Board the necessary information whereby the board may prepare its statements for billing the owner or consignee for the storage and other charges to be paid to the board, it being agreed (that as the board shall receive no service charges in connection with such cargo) the steamship company shall guarantee the board from losses due to any failure of the owner or consignee to pay to the board the amount of any charges which may have so accrued.

The responsibility of the board in respect to any such cargo remaining in storage shall be limited to its safe keeping in the usual manner pertaining to storage accounts so far as loss or damage may result from the negligence of its employees.

(18) Upon the steamship company giving the representative of the board, who may be in charge of the Ninth Avenue Pier, reasonable advance notice of the contemplated arrival of any vessel controlled or operated by the company, adequate berthing space shall be provided by the board for such vessel upon its arrival alongside of the wharf of said pier. Such berthing space shall be provided, as near as may be practicable in the judgment of such rep-



representative, opposite the space in the pier in use by said steamship company. The board, however, shall not be obligated to supply the company with berthing space for more than one vessel at a time, unless the remaining berthing space of such pier be not in use.

(19) The steamship company shall maintain such portion of the pier as may be used by it in a clean and orderly condition, in a manner satisfactory to the Port Manager employed by the said city. No goods, merchandise or material shall be brought by the steamship company upon the said pier, or be by it permitted to be stored thereon, which is in any way hazardous or offensive, or which may contaminate or effect other cargo.

(20) The board, through its authorized representatives, shall have a right to enter upon the portion of the pier used by the steamship company at all times for purposes of inspection, or for any purpose incidental to the rights of the board.

[fol. 1919] (21) No additions, alterations, or repairs shall be made to said pier without the written consent of the board.

(22) No signs, other than placards, shall be inscribed, painted or placed upon said pier by the steamship company, or under its direction, excepting with the written consent of the board first had and obtained. No placards shall be placed therein, excepting those as shall pertain to or advertise the steamship company's business or its agencies.

(23) The steamship company shall not use or permit the said premises to be used in whole or in part for any purpose or use in violation of any present or future laws, ordinances and general rules and regulations relating to sanitation, or the public health, safety, or welfare of any public or governmental authority at any time applicable thereto, including the City of Oakland and or the Board of Port Commissioners.

(24) The privilege herein granted is of a personal nature and the steamship company shall not at any time, in any manner, either directly or indirectly, assign, hypothecate, encumber or transfer it or any interest therein, or sublet the whole or any part of said pier space, or license the use of the same. In the event of any such assignment or



transfer, or any attempt to sublease or license the use thereof, whether directly, by operation of law, or otherwise, the privilege or license herein granted shall ipso facto cease and be null and void.

(25) If any sums of moneys payable to the board by the steamship company be not promptly paid when due, or in the event default be made in all or any of the terms, agreements or covenants herein contained on the steamship company's part to be performed, then, in any such event, at the option of the board, the board may by resolution or ordinance, and upon giving the company ten (10) days' notice, declare this privilege forthwith forfeited, and upon the conclusion of such ten (10) day period, if such default shall have not been cured, remove the company and its cargo and equipment from said premises, or, at its option, place or hold such cargo and equipment in storage at the expense of the said steamship company.

(26) This agreement is made subject to, and the steam-[fol. 1920] ship company shall at all times comply with, all the harbor and port requirements, rules and regulations adopted by the Board of Port Commissioners, the United States Government and other public authority, from time to time, including the rates, charges and regulations prescribed by the tariff of the Port of Oakland regularly adopted by the said Board.

(27) The Board, in its discretion, shall authorize and enter into such supplemental agreements, from time to time, relative to this agreement or the business operations of the steamship company and the use of the pier as it may deem necessary or convenient.

(28) The steamship company shall pay all licenses and other taxes required by law to be paid by it.

(29) The steamship company shall exercise all reasonable care and diligence in and about the occupation, possession and use of the said pier so as to avoid the causing of damage, loss or injury to any person or property whatsoever, and will repair all damage resulting from the use thereof, excepting such as may be due to ordinary wear and tear. The company will protect and indemnify the City of Oakland and the said Board of Port Commissioners and save them, and each of them, free and harmless from

any and all liability, charges, expenses or costs (including repairs except as may be due to ordinary wear and tear) to any and all persons, including itself, for damage, loss or injury occasioned to or sustained by such persons or their property in or by reason of the occupation, possession or use of said pier by the said company, its agents or employees, or by any business or other operations howsoever carried on by it.

Except as otherwise in this agreement expressly provided, the Board shall assume no responsibility for the safe-keeping of any cargo or other equipment or property brought on the said pier by the steamship company or by others for the account of said company.

(30) The steamship company shall furnish to the Board at the close of each month, and oftener if required by the Board, all necessary reports covering its steamship operations upon said pier, as may be required for the purposes of permitting the Board to bill the said company [fol. 1921] for the charges due it. Furthermore, the books of the company covering its operations upon said pier, shall at all times be open to inspection by the Board or its authorized agent. All bills rendered against the steamship company by the Board shall be paid on or before the 10th day of the month following the date of the invoice.

(31) In further consideration of the granting to the steamship company of the privilege of the use of said pier space as herein provided, the steamship company expressly undertakes and agrees that all discriminating rates and differentials against the Port of Oakland, or any of its publicly operated facilities, shall be removed from all tariffs under the control of the company, as well as from the tariffs of any steamship line or vessels for which it shall use the said pier as steamship agent, which tariffs it may be enabled to control, and the said steamship company will conscientiously use its best efforts with any conference to which it may belong to place the Port of Oakland on a strict parity with the port of San Francisco, and will endeavor to the extent of its ability to increase the amount of tonnage handled by it through the Port of Oakland according to the true spirit and purposes of this agreement.

(32) It is agreed that in the event of any controversy between the parties hereto, or any of their representatives

or employees relative to the interpretation of any provision of this agreement, or as to any ~~rights or duties~~ of the steamship company thereunder, the Board of Port Commissioners shall be the sole arbitrator, and the steamship company shall accept any decision the Board shall make in the premises and abide thereby so long as it chooses to continue the use of such pier space pursuant to the privilege herein granted.

(33) The steamship company shall pay to the Board upon the execution of this agreement the cost of the publication [fol. 1922] of the notice inviting proposals therefor and of the ordinance authorizing its execution.

In Witness Whereof, the parties hereto, thereunto duly authorized, have executed this agreement in triplicate, as of the day and year first above written.

Board of Port Commissioners, acting for the City of Oakland, a municipal corporation, By ———, President of said Board. (Seal.)

Attest: A. C. Abel, Secretary.

McCormick Steamship Company, By Charles Wheeler, V. P. G. M.

Approved as to form and legality this 17th day of Aug., 1932. Markell C. Baer, State Attorney.

[fol. 1923] EXHIBIT No. 8

This Agreement, made and entered into this 5th day of November, 1914, by and between City of Oakland, a Municipal corporation organized and existing under and by virtue of the laws of the State of California, and Howard Company, a corporation organized and existing under and by virtue of the laws of the State of California.

Witnesseth:

(1) It is hereby agreed that the boundary line between the property to which the City of Oakland is entitled under and by virtue of an act of the Legislature of the State of California entitled "An Act to incorporate the Town of Oakland and to provide for the construction of wharves thereat" in effect May 4th, 1852, and the property of the

Howard Company between the Easterly line of Myrtle Street extended Southerly in its present course and a line parallel with and 108.27 feet Westerly at right angles from the Easterly line of Filbert Street is the low tide line of May 4th, 1852, and that said low tide line of May 4th, 1852 is fixed and determined as located as follows:

Commencing at a point on the easterly line of Myrtle Street produced southerly in its present course which said point is 1109.12 feet along said line of Myrtle Street southerly from the southerly line of First Street, thence southwesterly in a straight line to a point on the line parallel with and 108.27 feet westerly at right angles from the east line of Filbert Street, which said point is 1275.18 feet southerly along said 108.27 foot line from the southerly line of First Street.

(2) Said Howard Company hereby agrees to expend on or before the 27th day of October, 1915, at least the sum of Five Thousand Dollars (\$5,000.00) in the building or maintaining of wharves and slips on the land of the City of Oakland southerly of said low tide line and between said Easterly line of Myrtle Street extended southerly in its present course and said 108.27 foot line and between said low tide line and the northerly pier head line in Oakland Harbor so that shipping may be advantageously accommodated thereat, and said Howard Company hereby further agrees, during [fol. 1924] the life of its contract to keep the wharves and slips now upon and hereafter to be constructed on said property in repair and open to public use during the life of this contract.

(3) It is hereby agreed between the parties hereto that said Howard Company, its successors and assigns, shall have the right to use for thirty-five years from and after the 27th day of October, 1914, the wharves and slips now existing and hereafter constructed and maintained upon the lands of the City of Oakland lying southerly of said low tide line of May 4th, 1852, and between said Easterly line of Myrtle Street extended southerly in its present course, and said 108.27 foot line and northerly of said pier-head line, upon the following terms and conditions, to-wit:

(a) Said right shall not be exclusive, but said wharves and slips shall be open to use by others to whom such right may be given by the City of Oakland.

(b) For the use of said wharves and slips said Howard Company shall pay to the City of Oakland tolls, wharfage and dockage at the rates charged by the City of Oakland at its other municipally owned wharves in the City of Oakland.

(c) Said Howard Company shall have the right to permit others to use said wharves and slips, but such use shall, as to the City of Oakland be deemed the use by the Howard Company, and the Howard Company shall be responsible to the City of Oakland for the tolls, wharfage and dockage accruing for such use as if such use were in fact the use of the Howard Company. Persons and parties using said wharves and slips other than the Howard Company or those permitted by it to use the same, shall pay, as a compensation for such use, tolls, wharfage and dockage at the same rates as are paid by said Howard Company.

[fol. 1925] In the berthing of vessels at said wharves, vessels designated by the Howard Company, or by those permitted by the Howard Company to use said wharves, shall have a prior right over all other vessels, and in handling goods over said wharves and in placing goods on said wharves said Howard Company, or those permitted by said Howard Company to use said wharves shall have a prior right over all other persons.

(e) The Howard Company shall have the right to maintain and use the coal hoisting trestle and its appurtenances now on the wharves already built as a part and appurtenance of its coal bunkers on its property in the rear of said wharf, and to remove, repair, or alter the same at any time.

(f) The Howard Company, its successors and assigns, shall, during said term of thirty-five years, maintain said wharf already built in good condition and repair, wear and tear and damage by fire and the elements excepted, and shall likewise, from the time of the construction of said wharf to be built, if the same be built, during the remainder of said term, maintain said wharf in good condition and repair, wear and tear and damage by fire and the elements excepted.

(g) The Howard Company shall keep said wharves insured against loss by fire in an amount equal to at least seventy-five per cent (75%) of the cost of constructing the



same under a policy or policies providing that loss, if any, shall be payable to the City of Oakland. In case of such loss occurring, the Howard Company shall have the right to repair or reconstruct the wharf damaged or destroyed, and upon such repair or reconstruction the insurance paid to the City of Oakland by reason of such loss shall be by it paid to the Howard Company. In case the Howard Company does not, within sixty (60) days after such loss, commence the work of repairing or reconstructing the wharf damaged or injured and complete the same with all reasonable diligence, the City of Oakland shall have the right to declare the right of use hereby granted at an end as to the wharf so damaged or destroyed, in which case the Howard Company shall have no claim whatsoever to said insurance.

(h) The Howard Company shall likewise during said term of thirty-five years maintain a slip at least fifty (50) feet wide on the east side of said wharf already built, and a slip at least fifty (50) feet wide on the west side of said wharf, dredged to a depth of at least twenty (20) feet at mean low water. In case of the construction of an additional wharf or wharves, said Howard Company, its successors or assigns, shall, at and from the time of the construction of said wharf, during the remainder of said term, dredge and maintain all necessary slips for the accommodation of shipping at said new wharf or wharves.

(i) The City of Oakland shall not construct or authorize the construction of any structure on the portion of the estuary of San Antonio hereinbefore described which in any way interferes with said wharves or slips or the access of vessels thereto or the unimpeded construction and use of the same.

(j) The Howard Company shall likewise, during the said term, maintain a suitable roadway across its lands from First Street to said wharves, and shall permit the same to be used without charge in connection with the use of said wharves by those entitled to use such wharves, but the permitting of such use of said roadway shall not create any easement or interest of any nature whatsoever either in said roadway or in the lands of the Howard Company. The Howard Company shall likewise [fol. 1927] maintain on each of said wharves a railroad track



for the transfer of freight between railroad cars and vessels and a track or tracks connecting said tracks with the tracks on First Street of the Southern Pacific Company and shall, during said term, switch cars to and from said tracks of the Southern Pacific Company from and to said wharves for any person permitted by the City of Oakland and desiring to use said wharves for the transfer of freight between railroad cars and vessels, and shall spot on said wharves for loading and unloading the cars so used by any such person. For such service of switching and spotting cars the Howard Company shall have the right to make a charge of Two Dollars and a half (\$2.50) per car, it being deemed that when a car is both unloaded and reloaded there is a double movement. Upon the termination of said term of thirty-five years the Howard Company shall have the right to remove said tracks.

(k) The City of Oakland shall pay the Howard Company, but only out of the receipts of said wharves and to the extent of ninety-five per cent (95%) of such receipts, as hereinafter provided, the present valuation of said wharf already constructed, to-wit: \$6640.35, with interest at the rate of five per cent (5%) per annum from the date of this contract. In case an additional wharf or wharves are constructed; the City of Oakland shall also pay to said Howard Company the actual cost of constructing said wharf or wharves and of making the slips on each side thereof together with interest at the rate of five per cent (5%) per annum. Upon the completion of said wharf or wharves, or slips, the Howard Company shall render to the City of Oakland a verified itemized statement in writing of the cost thereof, which statement shall be subject to check by the City of Oakland, and, as to all items not objected to in writing [fol. 1928] by the City within sixty (60) days, shall be final. In case the City of Oakland and the Howard Company cannot agree as to any item to which objection is so made, the propriety of such item shall be submitted to some firm of certified accountants, mutually agreed upon, for determination. Interest on the correct amount of such cost as finally determined shall run from the date of the rendition of such statement.

The Howard Company shall have the right to make additions or betterments to said wharves, and in case such addition or betterment is made the cost of the same shall

be deemed a part of the cost or value of the wharf to which the same is made and shall be repayable as such by the City together with interest at the rate of five per cent per annum. Upon the completion of such addition, the Howard Company shall render to the City of Oakland a verified itemized statement in writing of the cost thereof, the same to be subject to check and objection as in the case of the original cost of said wharf to be constructed, and any items not objected to to become final, and the propriety of any items so objected to to be determined in similar fashion, and the interest on the correct amount of such cost to run from the time of the rendition of such statement. Said City of Oakland shall likewise pay to said Howard Company the actual cost of maintaining and repairing said wharves and insuring the same, as hereinbefore provided, and maintaining said slips together with interest at the rate of five per cent (5%) per annum. The cost of maintaining and repairing said wharves, for which the Howard Company is to be so paid, shall not, under this provision, or any provision of this ordinance, include the cost of repairs or reconstruction necessitated by damage or destruction by fire to the extent to which such damage or destruction is, or under the provisions of Ordinance No. 738 N. S. should be, covered by insurance.

[fol. 1929] (1) On or before the 15th day of each month during said term of thirty-five years, the Howard Company shall render to the City of Oakland a verified itemized statement in writing of the cost of such repairs, maintenance and insurance during the preceding month, the same to be subject to check and objection as in the case of the original cost of said wharf to be constructed, and any items not objected to to become final, and the propriety of any item so objected to to be determined in similar fashion, and interest on the correct amount of such cost to run from the time of the rendition of such statement.

(m) The Howard Company shall keep full and accurate books of account of said costs and the same shall be at all times open to inspection and examination by the City of Oakland.

(n) On or before the 25th day of each month during said term of thirty-five years, the City of Oakland shall render the Howard Company an itemized statement in writing of

the receipts by the City of Oakland during the preceding month for tolls, wharfage and dockage for the use of said wharves and slips, and shall at the same time pay to the Howard Company ninety-five per cent (95%) thereof, the same to be applied in payment of the amount hereinbefore specified to be paid by the City to the Howard Company until such amounts are paid in full. In case said ninety-five per cent of such receipts by the City shall not, at the expiration of said thirty-five years, have fully paid for the amounts so to be paid by the City of Oakland to the Howard Company, nevertheless all obligations of the City of Oakland to pay the balance of said last mentioned amounts shall cease and determine. In case said amounts so to be paid by the City of Oakland to the Howard Company are fully paid in the manner aforesaid before the expiration of said thirty-five years, the City of Oakland shall, from the time at which said amounts are fully paid until the expiration of said thirty-five years, pay the Howard Company, [fol. 1930] out of the receipts by the City from said wharves and slips, the cost of maintaining and repairing said wharves and insuring the same and maintaining said slips, to the extent of 95% of the receipts, and in the event that for any month said receipts are more than sufficient to pay from 95% thereof all costs due said Howard Company up to said time, then of the surplus of said receipts, remaining after deducting five per cent of the gross receipts to be retained by the City of Oakland, and after repaying said costs to said Howard Company, 80% of said surplus shall be paid to the Howard Company, and 20% of said surplus shall be retained by the City of Oakland. In case 95% of said gross receipts in any one month shall be insufficient to repay to said Howard Company the costs herein provided for, together with interest, then the unpaid balance of said costs in favor of said Howard Company, together with interest shall be carried over into succeeding months until the whole thereof is repaid from said 95% of said gross receipts of said succeeding months.

(c) The City of Oakland does not and shall not assume any obligation to pay the said Howard Company any sum of money whatever except out of the gross receipts from the use of said lands so improved by said Howard Company and to the extent of ninety-five per cent of said gross receipts.

(p) In addition to the right to collect tolls, wharfage and dockage for the use of said wharves and slips on the premises hereinbefore described, said City of Oakland shall be entitled to collect dockage from ships and tolls on merchandise, at the rates hereinbefore provided for, for all ships berthing at, and for all goods moved over, any extension or portion of any wharves northerly of said low [fol. 1931] tide line of May 4th, 1852, and between said east line of Myrtle Street extended and said line 108.27 feet westerly from the easterly line of Filbert Street, but said City of Oakland shall not be entitled to make or collect any wharfage on merchandise for the use of any such portion or extension of any of said wharves, and said City of Oakland shall pay to said Howard Company, out of the receipts herein provided for, and in the manner herein provided, the cost of maintaining and repairing any wharves northerly of said low tide line.

(q) In case the City of Oakland fails to collect from parties permitted by it to use said wharves and slips other than the Howard Company and those permitted by it to use the same, the legal rates for such use, as hereinbefore provided, the City of Oakland shall nevertheless account to the Howard Company for the amount of such rates which the City so fails to collect as if the same had been collected.

(r) In case the Howard Company, its successors or assigns, fails to do or perform any of the terms and conditions of the grant of the right to use said wharves and slips which it is obligated hereunder to perform, and remain in such default for the period of sixty (60) days after notification to it by the Council of the City of Oakland, declaring it to be the intention to forfeit the right hereby granted, by reason of such default, the City of Oakland shall have the right to forfeit said right.

(s) The Howard Company shall have the right to construct, maintain and use on said wharves such superstructures as are necessary for the conducting of its business and shall have the right to alter, repair or remove such structures at any time.

[fols. 1932-1933] (t) The Howard Company shall pay all the expense of printing Ordinance No. 738 N. S.

This contract is executed in triplicate.

In Witness Whereof, the City of Oakland, a municipal corporation, by its Mayor heretofore duly authorized by Ordinance No. 738 N. S., in effect October 27th, 1914, has signed its name, and said Howard Company, a corporation, by its President and Secretary, heretofore duly authorized, has signed its name and affixed its official seal the day and year first above written.

City of Oakland, a Municipal Corporation, by Frank K. Mott, Mayor of the City of Oakland. (Seal.)

Countersigned, Geo. E. Gross, Auditor.

(Seal.)

(Auditor's No. 2000)

Howard Company, by S. H. Boardman, President;  
by H. G. Ramsay, Secretary.

Approved as to form and legality.

Charles A. Beardsley, Assistant City Attorney.

I, George E. Gross, as Auditor of the City of Oakland, hereby certify that there remains unexpended and unapplied a balance of the appropriation or fund applicable to the payment provided for in the foregoing contract sufficient to pay the estimated expense of executing said contract, as certified by the Board or Officer making the same.

Geo. E. Gross, Auditor.

Dated, Nov. 7, 1914.

[fol. 1934]

EXHIBIT No. 60

California Railroad Commission  
Transportation Department  
Engineering Division

Preliminary Report Providing A Statement of The Marine Terminal Problem In The San Francisco Bay Area, With Supporting Data. Case No. 4090.

San Francisco, California, January 14, 1936.

Dr. Ford K. Edwards, Transportation Economist.  
T. G. Differding, Assistant Engineer.

[fol. 1935]

San Francisco, Calif. January 14, 1936.



## -Case No. 4090

Mr. Warren K. Brown,  
Director of Transportation,  
Building.

Herewith is the preliminary report of the Engineering Division of the Transportation Department setting forth the result of a study dealing with rates, rules, regulations, practices, etc., of the marine terminal operations in the San Francisco Bay area in connection with Case No. 4090. It is planned to offer the report as an exhibit in this case, set for hearing before President Harris, January 14, 1936, in San Francisco.

This study and report has been prepared by Dr. Ford K. Edwards, Transportation Economist, and T. G. Differding, Assistant Engineer. It is the object of this report to place before the Commission for its consideration the various factors to be considered in a movement toward the stabilization of the terminal business on a reasonable, non-discriminatory and compensatory basis.

It is encouraging to note that the officials of the publicly owned and/or operated marine terminals have expressed their desire to cooperate with the Commission in its endeavor to remove as far as possible present unsatisfactory conditions.

The Commission's files show the results of many extended hearings and conferences which have from time to time dealt with the various phases of the problem involved herein. In order that the situation could be viewed in its entirety, it appeared desirable that the whole matter be brought into this investigation and, in so far as I know, this marine terminal investigation is one of the most comprehensive that has been undertaken by any State commission. The need for the investigation has been recognized by practically all of the operators who have urged the Commission to institute the same.

This preliminary report is to be followed by a final report outlining conclusions and recommendations of the Engineering Division dealing with the subject matter involved herein.

Respectfully submitted, J. G. Hunter, Transportation Engineer.

[fol. 1936] San Francisco, California, January 14, 1936.



## Case No. 4090

Mr. J. G. Hunter,  
Transportation Engineer,  
Building.

Pursuant to your instructions, we are presenting herewith a preliminary report in Case No. 4090, setting forth a statement and analysis of the wharfinger problem in the San Francisco Bay area. This preliminary report is to be followed by a second and final report providing a complete analysis and recommendations.

We find that two principal problems face the industry. The first is the inadequacy of existing revenues. The second is the diversion of tonnage from one port to another through the device of absorption.

Considering them in order, the failure to meet operating costs is primarily due to an increase in labor costs and to rate reductions. We believe a solution of this problem embraces the following: first, a scrutiny of the terminal expenditures to the end that unnecessary expenses in the form of absorptions or otherwise be eliminated; and second, a determination of the cost and value of the various services rendered with the object that the respective charge for each shall be reasonable and compensatory. For example, if the toll and other charges against the cargo are not reasonable and compensatory, the immediate task is to ascertain such fact and to prescribe what the proper charge shall be.

The completion of this analysis will determine our conclusions and recommendations in the final report. The purpose of the attached preliminary report is to set forth the facts and economic factors that must be considered in such analysis.

The solution of the revenue problem as outlined above may solve in part the problem of tonnage diversion through absorptions. However, all tariff absorption items have been analyzed at length in this report with the intent that those items may be cancelled which fail to meet such standards of reasonableness as this investigation may develop. [fol. 1937] Your attention is called to the fact that the major portion of the total dock facilities in the San Francisco Bay area is controlled by State or Municipal bodies and hence is not subject to the Commission's jurisdiction.

Any changes in the present rates, rules and practices of the private terminals can only be made, therefore, with the full cooperation of these bodies. They have assured us, however of their keen interest in this investigation and have offered every assistance.

We wish to state that we have been extended every assistance and cooperation by the Terminal operators and public bodies contacted in this investigation.

Respectfully submitted, Ford K. Edwards, Transportation Economist. T. G. Differding, Assistant Engineer.

[fol. 1938] California Railroad Commission

Transportation Department

Engineering Division

Preliminary Report

Providing a Statement of the Marine Terminal Problem in the San Francisco Bay Area, With Supporting Data

Case No. 4090

Dr. Ford K. Edwards, Transportation Economist;  
T. G. Differding, Assistant Engineer.

San Francisco, California, January 14, 1936.

[fol. 1939] TABLE OF CONTENTS

## Introduction

1. Scope of the Investigation	766
2. Procedure in Submitting Reports	767
3. Brief Statement of the Problem	768

## Part I—Presentation of the Problem

1. Statement of the General Problem	769
2. Division of Terminal Costs Between the Vessel and Cargo	772
3. Lack of Uniformity in Assessing Charges at San Francisco Bay Ports	778
4. Government Ownership and Operation	782
5. Increased Labor Costs	785
6. Dockage	789

7. Service Charges	790
8. Tolls	790
9. Wharf Demurrage and Storage	793

See Tables VII to XIII

10. Free Time	796
11. Car Loading and Unloading	798
12. Accessorial Services	798
Pool Cars	799
13. The Free Use of Terminal Facilities	800
14. Truck Use of Terminals	801
15. Payment Periods	805
16. Tariff Absorptions and Allowances	805
Pyramiding	
17. Differentials	813
18. Leases and Rentals	813
[fol. 1940] 19. Shipper Control of Terminals	814
20. Tariffs—Suggested Improvements in the Form of	815
21. Operation Without Tariffs	815
22. Railroad Operated Terminals	816

Part II—Supporting Data

1. Definition or Explanation of Terms Used	816
2. Encinal Terminals. Data re:	820
a. History.	
b. General description of property.	
c. Investment.	
d. Financial Organization.	
e. Rentals and Leases.	
f. Description of Facilities.	
g. Services and Types of Operation.	
h. Tariffs on file with the Commission.	
i. Steamship Services.	
3. Howard Terminal—Data as above	826
4. Parr-Richmond Terminal Corporation, Ltd.— Data as above	833
5. State Terminal Company, Ltd.—Data as above	841
6. San Francisco Terminals—Data as above	844
7. El Dorado Terminal Company—Data as above	846
8. J. M. Atthowe, doing business as Berkeley Transportation Company—Data as above	848
9. South San Francisco Terminal Co.—Data as above	851

10. The Paraffine Companies, Inc.—Data as above	852
11. Brief Review of the More Important Wharfinger Decisions of the Commission	855
12. Table showing Trend in Tonnage	856
13. Comparison of Service Charges in effect at San Francisco Bay ports and Stockton—Coastwise and Inland Waterway Trade	857
[fol. 1941] 13. Comparison of Service Charges in effect at San Francisco Bay ports and Stock- ton—Continued	
Intercoastal and Foreign Trade	858
Hawaiian and Trans-Pacific Trade	858
14. Comparison of Dockage Charges	
15. Comparison of Toll Charges (For comparison of toll charges at various United States ports—See pp. 56 and 57).	858
16. Comparison of Car Loading Charges	859
17. Comparison of Car Unloading Charges	860
18. Comparison of Wharf Demurrage Charges and Warehouse Storage Charges— Commodities:	
Ammonia, sulphate of, in bags	861
Canned Goods, N. O. S., in cases	
Cement, building, in sacks	
Merchandise, N. O. S. in Pkgs.	
Milk, condensed, in bbls.	
Milk, dry powdered, in bbls.	
Nitrates, Potash & Soda Ash, in packages	
Paper, toilet, in cases	
Peet Moss, in bales	
Fertilizer, N. O. S. in bags	
Grain, N. O. S. in bags	
Meal, copra, in bags	
Coal, in bulk	
Coke, in bulk	
Sand, in bulk	
19. Explanation of the Application of Wharf Demur- rage or Storage Charges, showing—(1) Free Time, (2) Time Bases Applied and (3) Illustra- tion using Cargo, N. O. S. (For comparison of free time at various United States ports, see page 67a.)	868

20. Map of San Francisco Bay Ports and Terminals	869
21. Map of Ports in Central California	870

[fol. 1942]

## Introduction

1. *Scope of Investigation:*

This report is made pursuant to the Commission's investigation on its own motion, first, into the rates, rules, regulations, tolls, charges, rentals, classifications, contracts, practices and operations of certain concerns doing business as public utility wharfingers and/or car loaders or unloaders and/or warehousemen to determine whether or not any or all such rates, rules, regulations, etc., are unreasonable, discriminatory or preferential in any particular, or in any manner illegal or unlawful, or whether additional tariffs should be filed with the Commission covering operations not now set forth in the tariffs on file.

The concerns so affected are as follows:

1. Encinal Terminals.
2. Howard Terminal.
3. Parr-Richmond Terminal Corporation.
4. State Terminal Company, Ltd.
5. W. C. Marr, M. S. Dodd and Nathan Moran, co-partners, doing business as San Francisco Terminals.
6. South San Francisco Terminal Company.
7. El Dorado Terminal Company.
8. Pacific Oriental Terminal Company, Ltd.
9. Rhodes-Jamieson, Ltd.

Secondly, the Commission's investigation inquiries into the rates, rules, regulations, etc., of certain additional concerns for the purpose of determining whether any or all of them are engaging in business as public utility wharfingers within the meaning of Section 2(z) of the Public Utilities Act and/or as car loaders within the meaning of [fol. 1943] Section 2(1) of the Public Utilities Act and should, therefore, be required to file tariffs with the Commission; and further, to determine whether such rates, rules, regulations, etc., of such concerns are unreasonable, discriminatory or preferential, or in any manner illegal or unlawful. The investigation also inquires into the question of whether any or all of these concerns are engaging in busi-

ness as public utility warehousemen within the meaning of Section 2(aa) or Section 21<sub>2</sub> of the Public Utilities Act.

The concerns without tariffs on file with the Commission and thus affected by this second part of the investigation are as follows:

1. Interstate Terminal.
2. Albers Bros. Milling Company.
3. J. M. Atthowe, an individual, doing business as Berkeley Transportation Company.
4. General Steamship Corporation, Ltd.
5. The Paraffine Companies, Inc.
6. G. B. Lauritzen, H. P. Lauritzen and M. P. Bush, copartners, doing business as Richmond Navigation and Improvement Company.
7. Sudden & Christenson.
8. Williams Dimond & Company.
9. Islais Creek Grain Terminal Corporation.

From time to time various difficulties facing the terminals have been brought to the surface by complaints before the Commission which were directed toward one or other practices. A review of these proceedings is provided elsewhere in this report. However, such complaints and the ensuing orders of the Commission were narrow in their scope and necessarily dealt with but positions of the entire problem. The scope of this investigation is sufficiently broad to include all phases of the terminal situation to the end that a more permanent solution may be found:

#### [fol. 1944] 2. *Procedure in Submitting Reports:*

It is the desire of the Commission to treat the problem in two steps. The first is a statement of the problem and of such facts as are necessary to support a preliminary analysis. This report is submitted as such a statement, to be added to or amended, however, by such testimony as may be presented and developed in the hearings. The second will consist of a final report to be made upon the completion of a more exhaustive analysis.

The examination of the operations and activities of certain concerns alleged to be doing business as public wharfingers and/or car loaders and/or warehousemen and without having tariffs on file with the Commission will be conducted during the scheduled hearings.



In addition to the concerns referred to above, there are in operation in the San Francisco Bay area a large number of professional car loading and unloading concerns whose tariffs are on file with the Commission. As the services offered by the terminals embrace car loading and unloading activities, particularly in the East Bay, and as such services are directly competitive with the services and charges of the professional car loaders and unloaders, it may be necessary at a later date to extend the order to include these concerns. Such extension of the order, however, will be delayed until such time as the consideration of the subject of car loading and unloading demands.

[fol. 1945] 3. Brief Statement of the Problem:

We find that two principal problems face the industry. The first is the inadequacy of existing revenues. The second is the diversion of tonnage from one port to another through the device of absorptions.

Considering them in order, the failure to meet operating costs is primarily due to a more or less permanent increase in labor costs and to rate reductions. We believe a solution of this problem embraces the following: First, a scrutiny of the terminal expenditures to the end that unnecessary expenses in the form of absorptions or otherwise be eliminated; and, secondly, a determination of the cost and value of the various services rendered to the end that the respective charge for each shall be reasonable and compensatory. For example, if the toll and other charges against the cargo are not reasonable and compensatory, the immediate task is to ascertain such fact and to prescribe what the proper charge should be.

The completion of this analysis will determine our conclusions and recommendations in the final report. The purpose of the attached preliminary report is to set forth the facts and economic factors that must be considered in such analysis.

The solution of the revenue problem as outlined above may solve in part the problem of tonnage diversion through absorptions. However, all tariffic absorption items have been analyzed at length in this report with the intent that those items may be cancelled which fail to meet such standards of reasonableness as this investigation may evolve. [fol. 1946] Attention is called to the fact that the major portion of the total dock facilities in the San Francisco Bay

area is controlled by State or Municipal bodies and hence is not subject to the Commission's jurisdiction. Any changes in the present rates, rules and practices of the private terminals can only be made therefore with the full cooperation of these bodies. They have assured us, however, of their keen interest in this investigation and have offered every assistance.

[fol. 1947]

## PART I

### PRESENTATION OF THE PROBLEM

[fol. 1948] 1. Statement of the General Problem:

The marine terminal operator, or wharfinger, stands at the point of interchange between inland and ocean transportation. His revenues accrue from two principal sources, i.e., from charges against the cargo and from charges against the ship, and since he provides an indispensable facility which represents not only a large investment but one costly to maintain, he is entitled to a fair and adequate remuneration for such.

However, the conflicting views of shippers and carriers as to their respective responsibilities toward the wharfinger, as well as early competitive practices grown respectable with age, have resulted in port charges and practices varying widely from port to port and from terminal to terminal within the same ports.

Upon inquiry into the reasons for the existing rates and charges, it becomes apparent that the reasonable cost to render the respective services has been of minor consideration and the wharfinger, in seeking a source of revenue, has placed charges on the basis of what he could get and where he could get it. The bargaining power of the respective parties was a not inconsiderable factor. Rates were never "scientifically" constructed no matter how loosely this term may be used. In fact, the wharfinger or marine terminal business appears to have been a neglected part of the transportation system. No set of guiding principles covering rates, rules or practices appear to have been laid down or recognized.

[fol. 1949] The complexity of the industry is indicated by the Federal Coordinator of Transportation in his report to Congress upon Transportation Legislation (74th Congress,

1st Session—House Document No. 89, pp. 56-57). He states: "The diversity of interests represented by those engaged in furnishing wharfinger service is so great and the practices which have developed in the industry are so lacking in uniformity as to promote widespread discrimination between those using or desiring to use such services. The industry is suffering from over-expansion of facilities and destructive competition, causing chronically low earnings."

The series of interviews held with all operators of terminals developed the fact that the existing charges for the many types of services rendered were established on the trial and error basis. Every existing tariff charge of any significance was questioned as to its reasonableness by one or more terminal operators, carriers or shippers. The terminal operators generally expressed the view that the charges for each service should be proper in themselves and expressed the desire that a fair basis of charges for the account of the cargo and the carriers, respectively, be determined and applied.

The first step in this direction appears to be the segregation of those services rendered for the account of the carrier from those rendered for the account of the cargo. Possibly the determination of that point in cargo handling at which the vessel's responsibility ends and the shippers' [fol. 1950] begins, may provide a clue. In any event, it appears only just and reasonable that each should pay for those services and facilities which it uses and requires.

With the charges segregated between the carrier and the cargo, the second step is that of determining what should be properly charged for each specific service rendered. This embraces the determination of reasonable charges for dockage, rentals, service charges, tolls, wharf demurrage etc.

We believe two factors should be used in such determination; first, the specific cost of rendering the services; and secondly, the value of such service to the user i. e., what the traffic will bear. Under ideal circumstances from a regulatory standpoint, it would be necessary to go no farther. An examination and analysis of these two factors should produce a just and reasonable charge. But as indicated above, conditions are not ideal. As a result, two additional factors project themselves into the picture and cannot be ignored. The first is competition and the second is tradition.

Although all these factors may have influenced the existing tariff rates, there can be no doubt that "charging what

the traffic will bear" and "competition" have been the controlling factors. No record could be found of any cost analysis used to develop and substantiate the existing rates, with the exception of some cost studies developed to show the inadequacy of existing wharf demurrage and car unloading charges. The statement of one operator that the [fol. 1951] rates, as far as he knew, were originally "picked out of the air and then revised where the shoe pinched too tightly or to meet competition," may be the answer. Probably from the terminal's standpoint this method sufficed as well as any, provided the gross revenue covered the costs of operation and provided some profit.

Apparently this rate procedure has reached the end of its usefulness. The constant development of new private and public terminals with a consequent diversion of tonnage from older operators and ports, the general effect of the "depression," the continual whittling at the rate level, the offer of gratuitous services under stress of competition, the movement of cargo by truck instead of by rail with consequent loss in car loading and unloading revenues, direct strike costs, and the increase in wages of labor coupled with a decreased labor efficiency have all contributed to the existing situation wherein the present rates provide insufficient revenues. As one operator remarked, "It is like eating soup with a fork. We work hard enough but don't seem to be getting anywhere." A statement of the operating profits and losses for 1930 to date appears for each terminal in the "Supporting Data" provided in this report.

As stated in the introduction of this report, the Commission's jurisdiction extends only to private operators. The California Railroad Commission has no jurisdiction over the rates, rules, regulations, practices, rentals, leases, etc., of the Board of State Harbor Commissioners of the State of California, which controls the harbor front facilities at [fol. 1952] San Francisco, or the Oakland Municipal facilities administered by the Board of Port Commissioners of the Port of Oakland. As these two boards control the major terminal facilities in the San Francisco Bay area, any solution of the problem which does not embrace their voluntary cooperation in the matter of rates, rules, practices, etc., prescribed for the private operators would fail.

It may well be, however, that certain of the difficulties and problems outlined herein have been no respecter of persons

and have dogged the footsteps of the State or municipally controlled terminals as determinedly as those of the private terminals. In any event, the two harbor boards on San Francisco Bay, as well as the City of Berkeley and the Board of Port Commissioners of the Stockton Port District, have expressed the deepest interest in this investigation and have outlined their problems and volunteered to cooperate to the end that the present chaotic situation may be corrected.

[fol. 1953] 2. Division of Terminal Costs between the Vessel and Cargo:

The responsibility of providing adequate revenue for essential terminal facilities can only rest upon the cargo and the carrier, yet the usual play of economic forces in business requires each of these parties to endeavor to assume a little of this responsibility as possible. The more successful the cargo and carrier become in avoiding this responsibility, the greater the problem of the operator in seeking adequate revenues.

The viewpoints of the shipper and the ocean carrier are historically in conflict. The inland transportation shipper is accustomed to a single rate which embraces the use of the railroad freight shed or platform in the movement of his goods between delivery truck and railroad freight car. The payment of an additional charge for the necessary minimum occupancy or use of such terminal facilities while his outbound freight is awaiting transfer to the railroad freight car would appear to him to be but an unnecessary irritation and this view is proper for the same concern provides both the line haul and the terminal facilities and hence the one charge may cover both services. But in marine transportation a third party usually provides the terminal facilities, a practice which from earliest times was necessitated by circumstances. Ocean carriers might unload their cargo at a port or terminal and not return for weeks, months, or possibly years. To maintain port facilities under such conditions was economically out of the question. Ordinary judgment demanded that more efficient use be made of the [fol. 1954] limited landing places nature and man might together provide. In many ports the same facility—pier, dock, quay, transit shed or slip—had to be used by innumerable vessels representing many lines. Thus economic pressure forced the ownership of marine terminal facilities and



wharfinger operations throughout the world into the hands of third parties—some private and some public.

This being the circumstance, the ocean carriers shrank from assuming the responsibility for the handling and care of cargo while beyond their jurisdiction. They have generally held to the theory that their contract of carriage applied from the reach of ship's tackle at one port to end of ship's tackle at another port and that any terminal charges for services beyond ship's tackle were for the account of the cargo.

On the other hand, the shipper has contended that the terminal charges for movement between ship's tackle and point of rest in the transit shed should be included in the ocean carrier's freight rate, i.e., the contract of carriage should begin and end at point of rest in transit shed at point of origin and destination respectively. This question is of more than academic interest for the determination of this point should have some bearing upon the respective responsibilities of the vessel and cargo in compensating the terminal operator for services rendered.

The view of the United States Shipping Board Bureau, Department of Commerce, which administers the existing regulation of water carriers, is pertinent to the point in question. In its decision in Docket No. 96, in Re Assembling and Distributing Charge, decided May 13, 1935, it stated in part as follows:

"In unloading vessels, sling loads of cargo are lowered to trucks on the wharf at ship's side provided by the stevedore, who then removes the cargo to the sheds or other place of rest, where it is set up in piles. In a sling load of general cargo there are likely to be a number of different commodities [fol. 1955] modifies for various consignees and even for a number of different ultimate destinations, which necessitates a certain amount of sorting. Similarly, in loading a vessel, the carriers frequently assemble in a single sling load cargo delivered to the wharf by several shippers. Respondents insist that their transportation rates are for service from and to ship's side only, but the record is clear that they refuse either to accept cargo for transportation or to make delivery to the consignee at such point. As stated by a witness for respondents 'an attempt to deliver general merchandise to their consignees at ship's side from the various hatches as fast as unhooked from the tackle or to reverse the operation in loading would be physically im-



possible in the space available. It would neither be in the interest of the cargo owner nor the shipowner because it would create an example of inefficiency that would be nothing short of a spectacle. Ship's side delivery to motor trucks would run up the cost to not only the vessel owner but the receiver of merchandise and would delay the receipt of merchandise if an attempt was made to deliver all of it to trucks at the high line. While the carriers argue that the movement between ship's tackle and pile on dock, including any necessary sorting or assembling, obviously involves additional services and costs, the record here is that the stevedore is "paid by the carriers a single amount for his various services, including the sorting, assembling and handling service in question, and although respondents [fol. 1956] attempted to allocate the cost of this service, not only do the stevedoring contracts of record fail to provide for any lower charge to the respondents in the event cargo should be delivered at ship's side, but the carriers admit that that method of receipt and delivery actually employed by them is less expensive, more efficient and causes less delay. Stevedoring charges are shown to have been reduced in December 1932.

At Portland, Seattle and Tacoma cargo is handled between ship's tackle and pile on dock by agencies separate from the steamship companies, but the charge for this service is absorbed by the intercoastal carriers. At San Francisco, as at Los Angeles and Long Beach, the stevedores perform this service as a part of their stevedoring contracts with the carriers. Rates for intercoastal transportation are the same between Atlantic ports and Los Angeles, Long Beach, San Francisco, Portland, Seattle and Tacoma, and the same form of bill of lading is used for consignments to and from Los Angeles and Long Beach as is used by each carrier for consignments to and from the other ports. According to respondents the transportation rate does not contemplate delivery at point of rest on the wharf beyond ship's tackle but in the case of San Francisco the carriers feel justified in not assessing a charge for the movement between ship's tackle and point of rest due to alleged lower costs to them at that port. No specific reason is given by respondents for the absorption at Portland, [fol. 1957] Seattle and Tacoma of "the charge of handling cargo between ship's tackle and point of rest.

The carrier's undertaking is not only to transport but also to deliver cargo to consignees because transportation, as the United States Supreme Court often has said, is not completed until the shipment arrives at the point of destination and is there delivered. *Danciger v. Cooley*, 248 U. S. 319; *Rhodes v. Iowa*, 170 U. S. 412, 415, 420; *Vance v. Vandercook Co.*, 170 U. S. 438, 451; *Louisville & Nashville R. R. Co., v. Cook Brewing Co.*, 223 U. S. 70, 82; *Kirmeyer v. Kansas*, 236 U. S. 568, 572; *Rosenberger v. Pacific Express Co.*, 241 U. S. 48, 50. Although respondents admit it is their obligation to make proper delivery of the cargo, they urge that delivery beyond ship's side is a separate operation, the cost of which should be borne by the cargo. This view conflicts with that of the United States Supreme Court, as expressed in *Brittan v. Barnaby*, 62 U. S. 527, 533, 535:—

'The word freight, when not used in a sense to imply the burden or loading of the ship, or the cargo which she has on board, is the hire agreed upon between the owner or master for the carriage of goods from one port or place to another. That hire, without a different stipulation by the parties, is only payable when the merchandise is in readiness to be delivered to the person having the right to receive it. Then the freight must be paid before an actual delivery can be called for. In other words, the rule is, in the absence of any agreement to the contrary of it, that freight, under an ordinary bill of lading, is only demandable by the owner, master, or consignee of the ship, when they are ready to deliver the goods in the like good order as they were when they were received on board of the ship. \*\*\*The general rule is, that the delivery of the goods at the place of destination, according to the bill of lading, is necessary to entitle the ship to freight. The conveyance and delivery is a condition precedent, and must be fulfilled (3 Kent 218).'

[fo. 1958] 'What constitutes valid delivery is well settled by decisions of the courts. It is necessary to show that the goods were landed on the wharf, that the different consignments were properly separated from the general mass of cargo discharged so as to be open to inspection and so placed as to be conveniently accessible to their respective

owners, that notice was given of their arrival and a reasonable time allowed for their removal. If, after being so discharged and separated, the goods are not accepted by the consignee, the carrier should not leave them exposed on the wharf but should store them in a place of safety and so notify the consignee, whereupon the carrier is no longer liable on his contract of affreightment, *Southern Pacific Co. v. Van Hoosear*, 72 Fed. (2nd) 903; *Clifford v. Merrill Chapman & Scott Corporation*, 57 Fed. (2nd) 1021; 'The Eddy,' 72 U. S. 481; 'The Titanic,' 131 Fed. 229. A mere discharge of cargo is not delivery and until the goods are so placed and tendered for delivery it is impossible for the consignees to receive and remove them. The service for which the assembling and distributing charge under consideration applies is necessary to effect orderly and expeditious delivery. It promotes the dispatch of vessels, minimizes congestion and confusion at ship's side and thus aids in the handling of a larger volume of cargo than could be adequately and economically handled at ship's side. If the shipper pays for delivery at ship's tackle and does not receive it but instead is obliged by the steamship companies to take delivery from place of rest on dock, which delivery costs the carriers not more but less, he may not be compelled to pay additional charge upon the assumption that he has received an additional service. The United States Supreme Court has held that a carrier may not charge the shipper for the use of its general freight depot in merely delivering his goods for shipment nor charge the consignee of such goods for its use in merely receiving them there within a reasonable time after they are unloaded. It is not within the power of the carriers by agreement in any form to burden shippers with charges for services they are bound to render without any other compensation than the customary charges for transportation. *Covington Stock Yards Co. v. Keith*, 139 U. S. 128, 135, 136."

The Shipping Board Bureau in this decision ordered the respondent carriers to cancel the assembling and distributing charge (assessed against cargo for use of terminal facilities, equipment and labor incident to handling between ship's tackle and pile on dock, including ordinary sorting, piling and breaking down), on intercoastal cargo at Los Angeles and Long Beach.

It appears that as the water carriers' service becomes an increasingly important and dependable part of the national common carrier transportation system, and furthermore becomes subjected to government regulation, its responsibilities more and more closely approach those of the common carrier by land.

The thought is advanced that it matters not who pays the charges as the shipper ultimately pays for everything. This "meat axe" view overlooks the fact that the burdens may as readily fall on the wrong shipper as the right one, or that a steamship line may be forced into bankruptcy [fol. 1960] through an undue burden before it can adjust its own rates and pass the charge on to the consumers.

For example, off-shore vessels charged half dockage or exempted from dockage at the East Bay terminals throw an undue burden upon the Coastwise and Inland Waterway trades which pay full dockage. We feel this discrimination is not removed by the supposedly compensatory practice of charging the off-shore shipper a 15 cent toll and the Coastwise and Inland Waterway shipper only a 5 cent toll. This disparity in toll charges is accepted almost as an institution in the Bay area, yet we were unable to find any operator who volunteered to justify this differentiation and it was only with difficulty that we located a party who could explain the origin of it. In 1917 the shipowners demanded reduced charges against the vessel at San Francisco, pointing to the free ports advertised at Portland and Seattle, and in particular calling attention to a certain shipload of Ceylon rice which the captain had refused to discharge at San Francisco because of the charges against the vessel. Instead he sought the free ports to the north where the California buyer was forced to take delivery. It should be mentioned that these ports were free to the vessels only as charges were assessed against the cargo.

For many decades San Francisco was the only port of importance serving California; there was no problem of attracting vessels and as a result the Board of State Harbor Commissioners had no difficulty in applying the theory that the cost of operating marine terminals should be borne [fol. 1961] about equally by the vessel and the cargo. Seattle and Portland, on the other hand, found the vessels reluctant to go north and as an inducement assessed little or no charge, placing the burden of supporting the terminal

principally against the cargo, where it still rests today. At the time the Offshore lines made their appeal in 1917, all ships paid equal dockage and all cargo paid 5 cents a ton toll.

The Board of State Harbor Commissioners was sympathetic to the plea of the vessels and agreed to remove the dockage charges if another source of revenue could be found to offset the losses thereby incurred. A committee representing Offshore, Coastwise and Inland Waterway carriers, as well as the shippers, was created to study the problem. It recommended that the tolls be raised to 15 cents a ton to compensate for the elimination of dockage. This was done. Apparently here was a case where the cargo was found able to bear the charge while the vessel could not. As there was no competitive need for reducing the charges against the Coastwise and Inland Waterway carriers, the committee concluded that there was likewise no justification in raising the toll on Coastwise and Inland Waterway cargo. Hence in these trades it remained at 5 cents per ton and this is the charge today.

Portland and Seattle are no longer free ports, although the bulk of the charges still rest against the cargo. The justification for the spread between the 5-cent and 15-cent tolls no longer exists, yet to change them would be difficult if for no other reason than that shippers and the carriers have become adjusted to them. Nevertheless, as a result the Coastwise line may be bearing some of the burden [fol. 1962] of the Foreign steamship company and in return the Foreign shipper may be bearing a portion of the Coastwise shipper's load, but the two are by no means equal in their incidence.

It may not be possible in this investigation to make an exact division of the terminal cost burden between the vessel and the cargo, but we believe that the recognition of the existence of such a division is a prerequisite to a solution of a terminal rate problem and should be given proper recognition in common with other factors.

[fol. 1963] Lack of Uniformity in Method of Assessing Charges at San Francisco Bay Ports:

In a study of the rates, rules and practices in effect at the different terminals around the San Francisco Bay, it is necessary that an understanding be had of the difference



in nature and amount of the charges assessed against the cargo and the carriers.

The principal differences exist between the San Francisco waterfront facilities on the one hand (owned by the State and controlled by the Board of State Harbor Commissioners), and the East Bay terminal facilities at Oakland, Alameda and Richmond.

The difference in charges may be more easily understood by first pointing out the two distinct types of operation here found. Considering first the operation at San Francisco, the piers on the San Francisco waterfront, with the exception of Nos. 45 and 56, are assigned to one or more steamship companies on either a "regular monthly assignment" basis, for which a wharf rental charge is paid, or upon a "temporary assignment" basis.

The "regular monthly assignment" includes only the *preferential right* of the applicant to dock his own vessels at such berth, and the Chief Wharfinger of the Port may use the berth or pier when unoccupied for other operations as he may deem expedient. The steamship lines, however, have maintained their own terminal organizations at such assigned piers and they are, for practical purposes, generally open only to the vessels of the assignee.

Turning to the second type of operation, it is found that Piers Nos. 45 and 56, operated respectively by the San Francisco Terminals and the State Terminal Company, [fol. 1964] Ltd., and likewise all the East Bay ports at Oakland, Alameda and Richmond are operated on the "open terminal basis." Each terminal is open to the vessels of all lines on an equal basis. Conversely, cargo is assembled at each terminal for all vessels which call. The terminal organization is maintained by the terminal operator or wharfinger and, unlike the situation at San Francisco, is completely divorced from carrier control.

Not only are the "open terminals" in direct competition with one another, but they are highly competitive with the steamship lines' private terminal organizations at San Francisco. Carriers having assigned piers on the San Francisco waterfront and bearing a fixed overhead cost desire to handle all or as large a portion as possible of their cargo over their own piers. The "open terminals," on the other hand, endeavor to attract as much tonnage as possible not only for direct revenue purposes but also



to attract the necessary steamship services. With this background, the essential differences in the charges assessed under the two types of operations can be pointed out.

Considering first the charges against the carrier, the Board of State Harbor Commissioners controlling the San Francisco waterfront assesses monthly wharf rental on a square foot basis, plus a dockage charge based on the net registered tonnage or underdeck tonnage measurement of each vessel docking. On the other hand, the East Bay terminals do not make a rental charge nor do they assess dockage except on Coastwise and Inland Waterway trades.

On the other hand, the East Bay terminals assess the Offshore vessel a service charge averaging about 40 cents [fol. 1965] a ton on outbound cargo and 50 cents a ton on inbound cargo. A somewhat lower charge is assessed against the Coastwise and Inland Waterway vessels. The Board of State Harbor Commissioners at San Francisco makes no such charge. The terminals assessing such a charge maintain that it is made up of two factors: the first, a charge for the use of the slip and the use of wharf facilities to which the vessel may tie up and from which it may receive and discharge cargo. They hold this factor to be equivalent, in principal at least, to the dockage charge assessed at San Francisco except that it is based on tons loaded and discharged instead of upon the net registered tonnage of the vessel. The remaining portion of the service charge provides compensation to the operator for various services rendered the vessel. These services are defined on page 132 of this report.

Turning to the charges levied against the cargo, we find the following tariff items in effect: Tolls (usually termed wharfage elsewhere), wharf demurrage, storage, car loading and unloading, and miscellaneous charges for weighing, use of special dock equipment, case labeling, scraping and re-marking cases, stenciling, tagging, wire strapping, tarring, consolidation of goods into pool cars, etc.

Considering these items in turn, it is found that the charge for toll in general is uniform around the Bay. Wharf demurrage is assessed on the basis of per day, per five days, per seven days, per twenty days, per thirty days or per season, with widely differing rates for the equivalent [fol. 1966] lent period at competing terminals. At some points demurrage is on a penalty basis and at others on

a storage basis. Free time ranges from five to twenty-one days. Car loading and unloading charges are generally uniform.

Not only has there been a lack of uniformity in the methods of levying charges at different terminals, but an almost equal difference exists in the charges levied at any one terminal against the various trades. For example, at the East Bay terminals vessels engaged in the Coastwise and Inland Waterways trades pay dockage while loading cargo. Off-shore vessels engaged in the Intercoastal, Hawaiian, Alaskan, Trans-Pacific and Foreign trades are accorded free dockage under identical circumstances. At San Francisco no vessels are accorded free dockage.

The rates of toll similarly vary. The toll against cargo carried in the Coastwise and Inland Waterway trades is uniformly 5 cents per ton, but is 15 cents per ton in the Off-shore trades, Intercoastal, Hawaiian, Alaskan, Trans-Pacific and Foreign services.

Uniformity in the method of assessing charges is naturally desirable but long custom and practice, coupled with fundamental differences in the types of waterfront operation in the San Francisco Bay district, will probably prevent any real progress in this direction. However, it is by no means necessary that there should be uniformity. On the other hand, it is very essential that there be an equality in these charges, whatever the method used in applying them or the title used to designate them. A variation in terms and definitions must not be used as a tool or a cloak to gain unwarranted competitive advantages over [fol. 1967] neighboring terminals. Such practices merely result in accusations, bad faith, retaliatory measures, indirect and confusing forms of rate cutting and losses in needed revenues. It is this situation we find among the San Francisco Bay terminals today. If the present differences in assessing charges are to be retained, then our problem is that of analyzing and defining them to the end that the burdens they place upon the carriers and cargoes may be somewhat equivalent.

This subject of uniformity in the method of assessing charges has been the topic of innumerable conference and association activities for many years on both Pacific and Atlantic coasts. On the west coast the Pacific Coast Association of Port Authorities has been the body most active.

With the object of stabilizing port practices and charges, this association, late in 1933, appointed a committee to evolve a program in this direction. Representatives of this committee have requested that this goal of uniformity be kept in mind during this investigation to the end that any changes made in rates, rules or practices locally shall, if possible, be in the direction of greater uniformity with practices elsewhere on the Pacific Coast.

[fol. 1968] 4. Government Ownership and Operation:

The Bay district exemplifies practically every degree of government, semi-government and private ownership and/or operation. In fact, among the general cargo wharfingers, the Encinal Terminals is the only facility fully privately-owned and operated. Various degrees of government ownership and control are exercised at the remaining general cargo facilities. The State owns all the facilities on the San Francisco waterfront where its investment in land, building, structures and equipment, as of 1932, the date of its last biennial report, totalled somewhat over \$99,000,000. Of this amount \$55,000,000 represent the buildings, structures and equipment. While the Board of State Harbor Commissioners prescribes and retains all rentals, tolls, dockage and wharf demurrage charged for the use of its facilities, the State itself conducts no physical operation.

The level of the charges is governed by the statutory requirement that neither a profit nor a loss shall accrue from the operations. Out of gross earnings the Board of State Harbor Commissioners is required to meet its own operating and maintenance costs, interest charges on harbor bonds and the redemption of such bonds as they mature. This it has successfully done throughout its history.

The Port of Oakland operates the major portion of its harbor facilities through a Board of Port Commissioners. All rates, rules and practices on public wharfinger facilities directly operated or leased by the Board are exclusively under its control, with the one exception of facilities under [fol. 1969] lease to Howard Terminal. The City of Oakland has expended from bond issues and tax levies for its port terminal and transportation facilities, including dredging and maintenance costs, approximately \$12,500,000, to which should be added about \$1,000,000 of terminal earnings reinvested in the plant. The revenues from the port prop-

erty, both operating and non-operating; are used to meet operating expenses, with any surplus accruing invested in additions and betterments. In addition, certain new structures are being financed in part by direct federal grants up to 45 per cent of the cost. The interest and redemption charges upon the port bonds are paid by the city from its general-tax income.

The City of Richmond port facilities represent a third type of operation wherein the facilities were constructed in part by the City of Richmond and in part by the Parr-Richmond Terminal Corporation. Land ownership is similarly divided. The privately owned portion of the facilities is free from city taxes, as is of course the municipally owned portion. The municipal facilities are operated under lease to the Parr-Richmond Terminal Corporation, which concern has full control over all rates and charges assessed at the Port. The interest and redemption charges against the port bonds are met by city taxes. At the facilities which are jointly owned by the city and the corporation, the profits are shared in proportion to ownership. However, all profits belonging to the city accrue to the Parr-Richmond Terminal Corporation until such time as the latter is fully reimbursed thereby for all investments at the Port.

The operation at the Berkeley Municipal Wharf is on a [fol. 1970] still different basis. The City of Berkeley leases a shedded wharf, known as the Berkeley Municipal Wharf, to J. M. Atthowe, an individual doing business as Berkeley Transportation Company, for a period of three years at \$100 per month. All wharfinger charges are established by city ordinance. The facility is not served by any railroad and is on shallow water served only by bay or river watercraft.

While the Port of Stockton is about 80 miles inland from San Francisco Bay, its activities in the two years of its operation have had a competitive bearing upon the older public and private terminals on the Bay. All the publicly owned port properties are under control of the Stockton Port District, which is governed by the Stockton Port Commission, a body composed of five businessmen serving without salary. The Port District represents a total investment of local, state and federal funds to the amount of \$8,774,121 in terminal, warehouse and railroad facilities; dredging of

32-foot ship channel, land, rights-of way, spoils disposal and lighting of waterway for night navigation. The Port District's investment in the structures and facilities totals \$1,379,334. Its revenues are derived from rentals and operation of the different facilities, together with services rendered for dockage, assembling and delivery of cargo, demurrage, tolls, etc. The District has issued \$900,000 in General Tax Bonds and \$155,000 in Revenue Bonds. Interest charges and bond redemption are met by tax levies upon the Port District.

The following question inevitably arises under such competitive conditions as those described above: "Should [fol. 1971] the port terminals built at public expense be considered as a community investment made for the purpose of attracting commerce in the expectation that the indirect benefits will adequately recompense the public; or should such public port development be operated on a remunerative basis as is necessary when private capital is invested in such improvements?"

This question is naturally of extreme interest to the private terminals in direct competition with public terminals. While there is no unanimity of opinion among public port authorities throughout the country, the representatives of the Board of State Harbor Commissioners, the Port of Oakland and the Stockton Port District have expressed the view that the rates and charges imposed should be upon the same basis as that required by a private operator.

The proposed development of additional municipal port facilities in San Francisco Bay and its tributary waters points toward additional problems to which passing attention might here be called.

No certificate of public convenience and necessity is required of the Railroad Commission for the development of new private port facilities and of course the Commission has no control over government projects. As private and public bodies, particularly the latter, become more and more port conscious, with the consequent construction of new ports, it may well ensue that the terminal capacity may greatly exceed the needs of the available traffic. In such instance, question arises as to who should carry the burden of such excess plant capacity and capital investment. The [f. 1972] logical answer to such a situation is the provision of some control over the construction of new facilities. The



absence of such control makes it increasingly difficult for a regulatory body to assure the private terminals of a reasonable return and for state and municipal ports to pay their way independently of the tax payer. But as a practical matter we can merely point out that such control does not exist today. The answer must be found elsewhere. It appears to us that two courses are open; the first, is an increase in the charges against the vessel or the cargo, or both, to compensate for the unused capacity; the second method, and the one most reasonable from the standpoint of the users of the service, is to charge a rate adequate to the needs of the favorably situated terminals and permit the remainder to struggle along with the aid of the local taxpayer, upon the theory that the latter will be recompensed by indirect benefits. The ports having the most favorable situation and possibly assured of a minimum tonnage by one or more large shippers will continue to attract vessel services and tonnage, while losses will fall upon the remainder.

As stated above, we do not know what, if anything, can be done about this problem, but in accordance with the expressed purpose of this preliminary report, we desire to comment on a trend that apparently can only result in increased burdens to the vessel and cargo or loss to a portion of the terminal operators.

#### [fol. 1973] 5. Increased Labor Costs:

The principal need for greater revenues apparently arises from increased labor costs, and, in view of the significance of this item, full explanation is warranted.

Labor inefficiency and its consequent expense to the terminals can be divided into two groups, viz.,

(a) That which exists in connection with stevedoring operations over which the terminals have little or no control.

(b) That which prevails in purely terminal operations involving the use of labor paid by the terminal.

While the two lose their identity in certain operations, such as cases where longshore labor unloads cargo from vessels to be immediately loaded to cars by terminal labor, for purposes of illustration we can regard the two separately.



# 1. Longshore Labor Inefficiency and its Effect Upon the Terminal:

Using the loading of canned goods and dried fruits to vessels as an illustration, prior to the longshoremen's strike of 1934 the average vessel loaded between 25 and 35 tons per hour per gang, depending upon the type of the vessel, its gear and the stowage problems involved. Since the strike, the average loading speeds obtained have been between 10 and 20 tons per hour and many steamer operators use a hypothetical figure of 15 tons per hour in calculating the dispatch of their vessels. This comparison is substantiated by a statement of an employer group, including the principal stevedoring operators of the port, in which it was revealed that the efficiency of longshore labor has decreased 45 per cent from the level that prevailed prior to the strike. Individual stevedore employers state that the decrease in [fol. 1974] tonnage loaded per gang per hour is as great as 60 per cent. In the loading of petroleum products in packages, the number of barrels loaded per gang per hour has declined from an average of 225 to 115.

This decrease is brought about in two ways; first, through limitation in the tons of cargo handled per gang per hour, and secondly, through the gradual imposition of certain cargo handling rules and restrictions upon the employers which have the direct effect of decreasing the efficiency of certain operations.

To illustrate the latter situation, cargo is moved from its place of rest on the dock to the ship's tackle by means of trailers which are drawn by small tractors. The cargo is placed on the trailers on top of a sling board which is the medium by which the cargo is hoisted into the vessel's hold. Through restrictions applied by the longshoremen, the loads are confined to thirty-five cases of canned goods, weight 60 lbs. each or more, whereas formerly each load consisted of forty cases. In the handling of dried fruit, the loads are restricted to seventy-two 25 lb. cases, whereas formerly one hundred cases was considered to be a fair and safe load. Concerned in this same operation, the longshoremen refuse to haul more than two trailers with each tractor, whereas formerly as many as four were hauled when long trucking distances were involved.

As can be readily seen, these conditions have led to a great decrease in the loading and unloading speeds of vessels.

thus requiring that a vessel remain longer at each loading [fol. 1975] berth. The inauguration of the six-hour day after which overtime rates of pay prevail, as defined in last year's award of the National Longshoremen's Board, has had the effect of altering steamer schedules to provide additional time in each port. Thus, a vessel calling at four piers or terminals in San Francisco Bay will frequently remain at each dock for a full day instead of completing her calls in two days as was formerly possible. This has the effect of reducing the number of berths available at each terminal for the accommodation of vessels within a specific period. This lack of berths forced the terminals to bear added costs in the form of overtime, stevedore traveling time and transfer charges on cargo, all occasioned by the terminal's endeavor to meet its operating obligation to the vessel.

The longshoremen have instituted certain rules as to the height that cargo will be piled upon the floor of the dock when discharged from a vessel. To examples of the effect that this has upon the terminals may be had in the instance of vessels discharging cases of pineapple and bags of sesame seed, two commodities which move in large volume. In the case of vessels discharging pineapple, it was formerly the practice of the longshoremen to pile the cases eight high, which is approximately seven feet. Through recent action of the longshoremen, this standard has been reduced to seven cases or its equivalent in height. To illustrate the effect that this move has upon a terminal, a vessel discharging 100,000 cases of pineapple now requires approximately 2,500 square feet of floor space more than was previously necessary. In the case of sesame seed, the longshoremen [fol. 1976] previously piled the bags five high on the dock. Now they limit the piling to four bags high which has the effect of increasing the space requirements by exactly 25 per cent. Many other commodities offer the same problem which, combined with the fact that vessels are slower in picking up their cargoes than formerly, has the effect of forcing the terminal to provide additional floor space or engage in highpiling operations which involve an expense for which the present rates are not designed to provide.

There is no accurate means of determining what increased space requirements have been imposed upon the terminals by the actions of labor but our observations lead us to believe that the facilities would have to be increased in the

neighborhood of 20 per cent to accommodate cargoes on a basis which would be comparable to that which existed prior to the strike. In other words, it would be necessary to build more facilities to handle the same or less tons than were handled prior to the strike, while the revenues would remain unchanged.

## 2. Terminal Labor Inefficiency and Its Effect Upon the Terminal:

The inefficiency of terminal labor is due to the unskilled type of labor available and to the rules and practices now applied by labor.

The inefficiency of terminal labor became apparent during the early months of 1935 when the majority of experienced car loaders left the employ of some terminals to engage in longshore work. The new men available for this work lacked the required experience and physical qualifications. The resultant increase in car unloading cost is [fol. 1977] enumerated in the following comparison of such costs for 1933, 1934 and 1935. The values were computed throughout upon the basis of the present straight time wage of 72½ cents per hour. These costs were obtained from the Encinal Terminals' records.

Unloading Cars	Canned Goods			Dried Fruit		
August, September and October	1933	1934	1935	1933	1934	1935
Direct labor cost per ton	\$ .2033	\$ .2452	\$ .2904	\$ .2299	\$ .2776	\$ .3265

Double handling of cargo which previously did not exist is another practice forced on the terminals. As an example, consider the case of a vessel discharging cargo, a portion of which is to be trans-shipped to a vessel loading in an adjacent berth. Prior to the strike the longshoremen in the hold of the first vessel would have loaded the cargo upon "flats" which would have been hoisted to the dock, picked up by electric trucks and transported to the side of the loading vessel from which point they would be hoisted into the hold for unloading. Under present practices, the longshoremen unloading the first ship will only place the cargo on the dock from which point terminal labor must load it to "flats" or trucks for transfer to a point near the loading ship. Then terminal labor must unload the freight from these "flats" or trucks as the longshoremen of the second

vessel will only receive it from the floor of the dock. In short, four additional handlings upon the dock are now required. In addition to the above-mentioned decline in labor efficiency, there have been substantial increases in the hourly rates of pay. For example, East Bay terminal labor [fol. 1978] received up to the fall of 1934 from 50 cents to 60 cents per hour straight time and from 50 cents to 90 cents per hour overtime. This labor now receives 72½ cents per hour straight time and \$1.07½ per hour overtime. At San Francisco the hourly rate has remained unchanged at 85 cents for straight time and \$1.20 for overtime. East Bay dock checkers formerly receiving from 50 cents to 75 cents per hour straight time and 50 cents to \$1.10 per hour overtime now receive 85 cents per hour straight time and \$1.20 per hour overtime. These latter rates have been in effect at San Francisco for several years.

### 3. Effect of Increased Rates of Pay for Dock Employees Upon Office, Traffic and Executive Departments:

The increase of hourly wages to 85 cents for straight time and \$1.20 for overtime for daily men engaged in checking, tallying, spotting, delivering and receiving cargo on docks and piers has had the effect of increasing the earnings of the daily checker to a point where he has equalled or exceeded the checker employed by terminals on a monthly basis. This forced an adjustment in the salaries paid by certain of the terminals to their checkers on a monthly basis. The increase in wages of employes on an hourly basis has similarly necessitated comparable adjustments in the salaries of clerical forces in executive, traffic and other departments.

There appears to be no doubt that terminal labor costs have increased substantially.

### [fols. 1979-1984] 6. Dockage:

Dockage is the charge assessed against the vessel for berthing at a wharf, pier or sea-wall structure or coming within a slip, channel, basin or canal. It is imposed to compensate the terminal for the facilities necessary to the berthing of a vessel. At the present time dockage charges are applicable upon all vessels using the San Francisco docks under the jurisdiction of the Board of State Harbor Commissioners. In general, no dockage is charged upon vessels

using East Bay terminals, with the exception of the Coastwise and Inland Waterway trades.

[fol. 1985] 7. Service Charges:

The service charge in effect at the East Bay terminals and at the San Francisco Terminal and State Terminal, Ltd., in San Francisco, is a charge assessed against the vessel for one or more of the following services rendered:

1. Arranging berth for vessel.
2. Arranging cargo space on wharf.
3. Checking cargo to or from vessel as required.
4. Receiving outbound cargo from shipper.
5. Delivering inbound cargo to consignee.
6. Preparing manifest or tags covering cargo loaded aboard vessel.
7. Preparing "over," "short" and "damage" reports.
8. Ordering cars.
9. Giving information to shippers and consignees regarding cargo, sailing and arrival dates of vessels.
10. Lighting wharf.

These services do not include any labor for handling cargo.

[fol. 1986] 8. Tolls:

Tolls is the charge for cargo conveyed on, over, or through a terminal facility, or loaded or discharged while the vessel is berthed at a terminal facility. It is a charge against the cargo although in practice it is assessed against and collected from the steamship companies who in turn collect it from the shipper or consignee. The charge for tolls is five cents per ton on Coastwise and Inland Waterway cargo and fifteen cents per ton on all other trades. In addition a limited number of specific commodity rates are quoted in all trades. ▀

As a means of increasing revenues, various terminals suggested as one source an increase in the toll charges. A comparison of toll charges assessed at other ports is provided in the following table.



Table Showing Toll (Wharfage) Charges at Leading Ports—1935

Port	Cents per Ton	Description
Vancouver, B. C.	50	All trades
Everett, Wash.	50	All trades
Seattle, Wash.	50	All trades
Tacoma, Wash.	50	All trades
Gray's Harbor, Wash.	50	All trades
Portland, Oregon	50	All trades
San Francisco Bay Ports, California:		
San Francisco		
Alameda	5	Coastwise & Inland Waterway
Oakland	15	All other trades
Richmond		
Stockton		
Los Angeles, California	15	All trades
Los Angeles Outer Harbor Wharf and Dock Company [fol. 1987]	10	All trades
Long Beach, Calif.	10	All trades
San Diego, Calif.	10	All trades
Galveston, Texas	25	Inbound traffic
	50	Outbound traffic
	25	All Coastwise and Intracoastal traffic; import and inbound Intercoastal traffic
Houston, Texas	50	Export and outbound Intercoastal traffic
New Orleans, Louisiana	15	All trades
Charleston, South Carolina	20	All trades
	12	Top wharfage on all traffic
Baltimore, Md.	6	Side wharfage
	None	When rail line haul
Philadelphia, Pa.	None	
New York City, N. Y.	None	
Boston, Mass.	25	All trades
Portland, Maine	60	On all traffic, including handling charge

Source of data: Port and Terminal Charges, Corps of Engineers, U. S. Army, War Department, 1935 Series.

An examination of the table reveals that the toll charges in the San Francisco Bay district are much lower than those assessed at all of the North Pacific Coast ports. The 5-cent and 15-cent charges of the former are to be compared with the 50-cent charges of the latter. On the other hand, the Bay district charges compare more favorably with the Southern California ports with their 10-cent to 15-cent toll charges. The local Coastwise rate of 5 cents, however, is the lowest on the coast. The charges at Texas ports are higher again, ranging from 25 cents to 50 cents. The New [fol. 1988] Orleans charges of 15 cents is the same as the Bay district Offshore charge. The charges on the Atlantic Coast vary from free toll up to 60 cents per ton, but comparisons are difficult because the services rendered are not equivalent. In fact, at North Atlantic ports, tolls (wharf-



age) is the exception rather than the rule and at the few ports where it is assessed, the railroads absorb the charge in their line haul rates. At Portland, Maine, the toll includes handling.

An obstacle to raising toll charges to increase terminal revenues lies in the fact that at the State Terminal Company, Ltd., and the San Francisco Terminals, the Board of State Harbor Commissioners collects 100 per cent of the tolls, while at the Howard Terminal, Oakland, the Port of Oakland receives all tolls from cargo moving over the quay wall berth (No. 3) and a portion of the tolls earned on the remaining two piers.

Recommendations for increases in toll charges, as in the case of any other charge, should be capable of justification. They should be related to the services rendered, i. e., they should be fair, reasonable and justifiable of themselves without passing a burden on to other services or having to carry a burden properly chargeable elsewhere.

The point has been raised that any increase in toll charges would drive traffic to Portland, Seattle or Los Angeles. This is no doubt true for a portion of the traffic, but the bulk would be unaffected.

The difference between the five-cent and fifteen-cent per ton charges on Coastwise and Offshore trades, respectively, is questioned. There seems to be little justification for this [fol. 1989] difference. It is necessary to point out that at San Francisco the monthly wharf rentals charged Coastwise and Inland Waterway trades by the Board of State Harbor Commissioners are \$.012 per square foot, or double the \$.006 charged Foreign or Offshore trades. Furthermore, Coastwise and Inland Waterway vessels pay full dockage while discharging cargo in addition to the above monthly rental. Under such circumstances the Offshore lines pay half dockage. At East Bay terminals the toll charge is likewise five cents and fifteen cents on Inland Waterway and Offshore trades, respectively; while at the same time a dockage charge is assessed against the former and not assessed against the latter.

No doubt the increased charges against the Coastwise and Inland Waterway carriers offsets in some degree the low toll charge against the cargo. However, comment has been made earlier in this report on the inconsistency of assessing a low charge against the cargo to offset a high

charge against the vessel. Two separate parties are concerned and the adjustment of the burden between them is far from being automatic. However, the carriers and the cargo have evidently become adjusted to the relationship and while belief was expressed that the two tolls should be the same, hesitancy was shown toward taking the necessary readjustment steps.

Question is raised concerning practices of charging toll on cargo barged from the East Bay to San Francisco terminals for account of the steamship line. Does the Offshore toll of 15 cents or the Inland Waterway charge of 5 cents apply? The tariffs do not clearly specify which.

[fol. 1990] A further problem arises in connection with the charging of toll upon trans-shipment cargo which moves out of the custody of the terminal between its receipt from one vessel and its delivery to another. The tariffs uniformly provide that inbound cargo on which tolls have been paid and which has been landed on the wharf and not removed therefrom may be reshipped from the same wharf without the payment of a further toll. However, where warehouses are adjacent to the wharf or terminal property, question arises as to whether or not cargo has been removed to such warehouse, held and returned to the terminal for shipment at the payment of one toll charge.

#### [fol. 1991] 9. Wharf Demurrage and Storage.

Every terminal operator in the Bay area held the existing rates and practices covering wharf demurrage and storage to be very unsatisfactory. Wharf demurrage is defined as that charge accruing upon cargo left in the position of the terminal beyond the free time period.

Wharf demurrage was originally a penalty charge to ensure that goods would not remain on the docks for a longer period than was reasonably necessary for the carrier or consignee to remove them. If the shipper or consignee desired the goods held, they were left in storage areas for which a period penalty wharf demurrage rate was assessed, plus a handling charge in some cases. But today, under the influence of competition, the wharf demurrage rates have been so reduced and the rules and practices so liberalized that it is difficult to distinguish between demurrage services on the one hand and warehouse storage service on the other. This is particularly true where goods are held

under both demurrage and warehouse storage in the same transit shed as Encinal & Howards. The only differences existing appear to be in responsibility of the terminal in case of storage to deliver the goods to the tail-gate of the truck, while under wharf demurrage the truck comes to the pile. Other services, such as handling, keeping of records, protection and checking deliveries are about the same in either case. The cargoes may be placed in adjacent piles on the wharf and delivered in small lots to the consignees. Both cargoes may have to be reiled by the terminal to release valuable space necessary to its operations. Yet the demurrage rate at the East Bay terminals of 11 cents per ton per day chargeable on canned goods and other [fol. 1992] commodities is so low that the shipper may leave it on demurrage for extended periods before it equals the storage charges. Terminal operators state the demurrage charges fail to compensate them for the valuable space occupied and the services and responsibilities incidental to handling such cargo, particularly where the goods must be moved or high-piled. In fact, goods paying demurrage may be high-piled one day at the terminal's expense and delivered the next with no compensation other than the 11 cents per ton per day. The cost of high-piling alone averages between 20 cents and 25 cents per ton. The terminal is thus forced to gamble upon the length of time the goods will remain in storage, hoping that if it has had to shift or handle the goods in any manner, they will remain long enough to compensate it for such expense. As a result of the breakdown of demurrage rates, even distribution accounts necessitating many small deliveries are being held on demurrage rather than upon storage rates.

The rates for wharf demurrage assessed by the terminal operators on the east side of the Bay are generally based on a per diem basis without a charge for "handling." The rates at all the San Francisco piers and terminals are on a period basis but with no charge for handling, except in some instances at the terminals. The "uptown" warehouses, and so far as we have been able to determine, there "handling" charge. The rates at the terminals on San Francisco Bay, generally speaking, are a very small percentage of the competitive rates in the "uptown" warehouses, and so far as we have been able to determine, there is no equitable justification for such depressed charges.

[fol. 1993] To illustrate, under the existing situation a shipment of canned goods is offered to a terminal for storage. To conserve space it is piled above the normal height, at an additional cost to the terminal which might reach 25 cents per ton. An additional cost is incurred to break down the pile. The owner of the goods can store them for a few days, even as short a period as one day, for which he would be charged  $1\frac{1}{4}$  cents per ton with no charge for piling and unpling. There appears to be no sound reason for this situation, other than that not all the terminal operators are agreeable to changing the practice.

The following illustration will serve to show the disparity in rates charged by the terminals and the rates charged by the warehouses.

Assume a shipment of 1,000 cases of canned goods weighing 50,000 pounds, received for storage on June 1st—the charges would be:

Storage charge at Warehouse	Storage—1.2c Per case per month
June 1-July 1	\$12.00
July 1-Aug. 1	\$12.00
Aug. 1-Sept. 1	\$12.00
Sept. 1-Oct. 1	\$12.00
	<hr/>
	\$48.00
Handling at 2.25c per case	\$22.50
	<hr/>
Total	\$70.50

[fol. 1994] Wharf Demurrage at East Bay Terminals:

Period	$1\frac{1}{4}$ c per ton per day—after free time of 10 days, ex- cluding Sundays and holidays.
June 1 to June 13—free	
June 14 to June 30—17 days	\$5.31
July 1 to July 31—31 days	9.69
Aug. 1 to Aug. 31—31 days	9.69
Sept. 1 to Sept. 30—30 days	9.38
	<hr/>
Total	\$34.07

# Wharf Demurrage at San Francisco Terminals:

## Period

Free time—10 days excluding Sundays and holidays  
 Next 20 days—15 cents per ton  
 Next 30 days or fraction thereof—25c per ton  
 Next 30 days or fraction thereof—30c per ton  
 Each succeeding 30 days or fraction thereof—30c per ton

June 1-July 13—Free

June 14-July 3—20 days at 15c \$3.75

July 4-Aug. 2—30 days at 25c 6.25

Aug. 3-Sept. 1—30 days at 30c 7.50

Sept. 2-Oct. 1—30 days at 30c 7.50

Total \$25.00

Tables shown in Appendix of this report further amplify the wide variation in rates. They show a comparison of the wharf demurrage charges assessed on various commodities for different periods of time at the several ports and terminals on San Francisco Bay. The warehouse rates applicable at either terminal warehouse facilities or at "up-town" warehouses are also shown.

We believe a sound solution of this problem would be the assessment of a "penalty" charge upon cargo held under wharf demurrage beyond the free time. On the other hand, goods under storage would be assessed a storage charge on a period basis plus a charge to cover the ordinary labor and duties incidental to receiving, storing, piling and de-[fol. 1995] livering of the goods.

The shipper or consignee should be given an option upon the expiration of the free time as to whether the goods were to be held under wharf demurrage or storage. This procedure would require shippers leaving goods beyond the free time to pay a charge having some relation to the actual out-of-pocket cost of the terminal and the use obtained of the facility.

The rates established should be based upon terminal costs and be fully compensatory.

## [fol. 1996] 10. Free Time:

The free time is the time allowed for assembling cargo for outbound water movement or for removing cargo dis-



charged from vessels or other watercraft before the assessment of wharf demurrage charges.

The free time allowed at the various terminals on the San Francisco Bay has been a source of friction among the operators. Beginning with an allowance of five days, it has been extended under pressure of competition to ten days and in certain circumstances to twenty-one days. In fact, the limit is indefinitely extended when vessels are delayed. Thus the most valuable operating space on the floor of the transit sheds is deprived of its most effective use.

The shipper is entitled to reasonable opportunity to deliver and assemble his goods on the dock prior to the vessel's arrival. The consignee likewise is entitled to a reasonable period in which to remove them. The problem is the determination of this reasonable period. If it is too short, it unduly inconveniences the shipper. If it is too long, it constitutes an uneconomic use of valuable space for which the average shipper can ill afford to pay, whether in the form of a higher toll charge or a wharf demurrage charge.

In the long run every additional day's time adds to the terminal costs and eventually this cost is passed on to the consumer of the service. If the requirements of certain shippers or certain cargoes demand that the goods remain for extended periods on the wharves, it appears as only [fol. 1997] reasonable that those enjoying this additional service should be the ones to pay for it. On the other hand, those who remove their goods promptly should not be forced, directly or indirectly, to bear the burden.

There is also some question as to whether the direct benefits from the extended free time accrue to the shipper and consignee or to the commercial trucker. If, for example, the consignee is not in a hurry for his goods, the trucking company may leave the goods at the dock the full free time in order to pick them up at its leisure or at odd hours when its equipment is free.

Practically all the terminals expressed the thought that the present ten-day free time period was too long. The general view was that free time should be reduced to five days on inbound cargo and to either five or seven days on outbound cargo. The longer period for outbound goods was felt necessary by some to assemble cargo in advance of the vessel's arrival.



A comparison of the free time periods allowed at various Pacific Coast ports is provided in the following table:

[fol. 1998]

Free Time Allowed Before Assessment of Demurrage or Storage Charges

Port	Coastwise Trade	Offshore Trade
Vancouver, B. C.	5 days	5 days
Everett, Wash.	5 days	5 days
Seattle, Wash.	5 days	( 5 days Inbound except Trans-Pacific ( 10 days Outbound except Trans-Pacific ( 10 days Trans-Pacific 10 days
Tacoma, Wash.	5 days	( 10 days except Inter- coastal Inbound. ( 5 days Intercoastal Inbound
Portland, Oregon	5 days	( 10 days except Inter- coastal Inbound. ( 5 days Intercoastal Inbound
Richmond, Calif. )		
Oakland, Calif. )		
Alameda, Calif. )	10 days	10 days
Stockton, Calif. )		
San Francisco, Calif. (Assigned Piers)	5 days	( 10 days on all Outbound ( 5 days Intercoastal ( Inbound ( 7 days Inbound except ( Intercoastal ( 10 days in-transit ( Inbound
San Francisco, Calif. (Public Terminals)	10 days	10 days
Long Beach, Calif. )	5 days Outbound	( 10 days Outbound
Los Angeles, Calif. )	3 days Inbound	( 10 days Inbound except ( Intercoastal ( 5 days Inbound Inter- coastal
Los Angeles, Calif. (Outer Harbor Dock & Wharf Company)	5 days	10 days
San Diego	( 5 days Outbound ( 3 days Inbound	( 10 days Outbound. ( 10 days Inbound except ( Intercoastal ( 5 days Inbound Inter- coastal.

[fols. 1999-2004] It will be noted that on Coastwise traffic all the ports have five days or less free time except the "open terminals" on San Francisco Bay and Port of Stockton, which provide ten days. In the Offshore trade the free time is generally five days on Intercoastal inbound traffic except at the open terminals.

[fol. 2005] 12. Accessorial Services:

Accessorial services provided by the terminals and not dealt with heretofore in this report include the following:

1. Weighing.
2. Taring.

3. Labeling.
4. Strapping.
5. Stencilling.
6. Scraping and remarking.
7. Consolidation of pool car shipments.
8. Handling of rolls of boxboard.

Description of these services will be found on Page — of this report.

The revenues derived by the terminals from these services are not of large account. The actual labor involved is in many cases provided by an "independent operator" hired by the shipper. The broad question is raised as to the sufficiency of the charge for the services involved.

For example, no charge is made for weighing grain in conjunction with car loading or unloading. In such case the tariff states that the car loading includes the cost of weighing. As the act of weighing generally requires that the cargo be hand-trucked over the scales and the weights for each load recorded with proper reductions for the tare weight of the truck, it is obvious that an accessorial service is performed at a cost to the terminal and for which it should be compensated. The charge for such should rest with the party receiving the service. The same criticism may be directed toward the practice of allowing the shipper or his agent to do his own weighing on the terminal where he pays no charge for the use of the facilities. The lack of charge is [fol. 2006] occasioned by competition with San Francisco where free facilities for this service are offered.

The operation of pool cars and the charges for services rendered thereunder is open to investigation. Pool car operations consist of the assembling of small lots of freight to make up the minimum weight necessary to obtain carload rates. The goods are consigned from two or more shippers and destined for delivery to two or more consignees. As a result of the pool car service there is practically no movement of canned goods at L.C.L. rates to Intercoastal points, the shipments of the smaller shippers being pooled. The goods are forwarded with the terminal as shipper and consigned to itself or its agent at port of discharge where they are distributed by the terminal, its agent or the vessel's agent. For this pool car service the terminal levies a flat

charge of 25¢ per enclosure receipt, i.e. a flat charge against each shipment. This charge will be increased to 50¢ effective January 18, 1936.

To attract the necessary minimum tonnage the terminal advertises a ship sailing for a given port on a given date. If the terminal fails to consolidate the minimum carload tonnage, three courses are open: first, it may hold the shipment and endeavor to build it up to the minimum carload weight; second, it may endeavor to consolidate its pooled car shipments with that of another terminal, absorbing the transfer costs thus incurred; and, third, it may absorb the difference between the charge on the quantity actually assembled and the charge on the prescribed minimum carload weight.

[fol. 2007] Three questions herein arise: First, is pool car assembling a proper function of the terminals; second, if it is, is the charge for enclosure receipts reasonable; and third, if losses are incurred, is this an undue dissipation of terminal revenue, the burden of which must be borne by other services?

#### [fol. 2008] 13. The Free Use of Terminal Facilities:

Although the terminal companies assess charges against the vessel and the cargo for the facilities made available, there are in addition many outside parties who conduct their operations upon these same facilities paying no fee for their use. Such include the weighers, samplers, fumigators, strappers, carloaders, stevedores and other handlers of cargo.

The effect of this is shown by the following illustration: Assume a tramp vessel arrives with bulk cargo for discharge at a public terminal. The stevedoring of the vessel is put up for bid and if an independent stevedoring company, in competitive bidding with the terminal, receives the award, the wharfinger must stand by and see his own facilities used by the stevedore without compensation.

Heretofore the charges against the vessel and the cargo have been adequate to compensate the wharfinger, and little or no question was raised concerning the application of charges against these third parties; but with the terminals faced with insufficient revenues, we seriously question the granting of such free use of their facilities.

At San Francisco the Board of State Harbor Commissioners assess public weigh masters a fee of \$10.00 per month plus one cent per ton on all cargo weighed.

The Los Angeles Board of Harbor Commissioners has met this problem by requiring all persons in the business of handling cargo on the municipal terminals, whether in the capacity of stevedore, handler, carloader, or vessel operator or agent, to obtain a handling permit for which an annual fee of \$100.00 is charged.

[fol. 2009] 14. Truck Use of Terminals:

In 1929 the bulk of the tonnage from and to inland points was moved by rail. In 1935 the trucks moved the bulk of such tonnage. This changing trend of transportation from rail car to trucks has increased the operating cost of the terminals on the one hand and reduced their revenue from car loading and unloading operations on the other hand.

The terminals were originally constructed for the land movement of cargo by rail and the rapid shift to the use of trucks has tended to greatly congest the transit shed operations and to force the widening of these facilities, where physically possible, to properly accommodate the truck. The items of increased cost to the terminals are many. The truck enters the transit shed by means of center aisles designed originally for hand trucks or gasoline jitneys. It occupies these aisles during the loading or unloading operation, which may consume up to three hours. The increasing size of the trucks coupled with the increased use of trailers adds to the congestion. It is necessary for normal terminal and stevedoring operations that the center aisle of the building be kept open. They therefore must be constructed sufficiently wide to allow trucks traveling in opposite directions to pass with sufficient space for smaller vehicles to operate in the aiseways at the same time. However, in addition to this there must be room alongside of the aisleway for the truck to stand while it is loading or unloading. If the cargo moved by rail this space would be used for storage or handling of cargo and a revenue earned therefrom.

Movement by truck frequently causes freight to be delivered [fol. 2010] at the dock for outgoing steamers far in advance of the arrival of the steamer because the truckman very often does not have sufficient equipment to handle large lots in a short space of time or he may be using his equipment during the day for one type of work and haul-

ing to the dock at night, thereby obtaining maximum use of the truck to the end that he can quote a low rate for the handling of the freight. A similar feature of truck deliveries defeating the economical use of dock space is the fact that trucks hauling carload lots will deliver part of the lot one day and the balance several days later with the result that space is held open which might be usefully employed for other cargo. These practices prevent the efficient locating of freight on the dock to the end that it will be proximate to the vessel's berth, for the reason that it is not known at the time the goods arrive on the facilities which berth will be available for the steamer. The expense of moving the goods to a point available to the steamer falls on the terminal operator.

This differs from the practice followed in handling rail cargo. The movement here is more flexible in that goods can be held in the cars upon receipt until a day or so before the arrival of the vessel and, in the case of goods received from steamers, the cargo can be loaded by the terminal into cars in advance of the requirements of the consignee and held on the tracks, thus conserving dock space.

The design of terminals in the past has recognized the rail car as the principal means of moving the tonnage. The rail cars are handled on the outside of the buildings and [fol. 2011] are spotted in proximity to the outbound freight for loading, or at the spot on the dock where the freight is being assembled for outbound steamers when the car is to be unloaded. Most of the activity in connection with cars is carried on upon outside loading or unloading platforms with a minimum of congestion with stevedoring gangs loading or discharging to or from the vessel. On the other hand, a large truck and trailer discharges goods in the center aisle at a location proximate to the vessel and in the midst of stevedoring activity, and blocks not only a portion of the center aisle, but a portion of side aisles as well. As a result, the gasoline jitneys serving ships and the stevedores working in the side aisles are slowed down and the ship loads or discharges less tons per hour. This means longer occupancy of the berth and larger carrying charges per ton of freight handled. This slowing up of the vessels and the terminal operations means that more dock space must be provided upon which to handle the same number of tons which could have been

handled under previous circumstances. The movement toward wider transit sheds exemplifies this.

The bitter competition between docks and terminals has resulted in the trucks being given services costly to the terminals. The terminal operator is forced to provide a space for the unloading of cargo from trucks so that the truckman can discharge direct from his truck to the pile on the dock without requiring any hand trucking.

If trucks cannot be accommodated as they arrive at the terminal, there is a growing practice for the latter to provide "flats" or "pellets" upon which the truckman will [fol. 2012] discharge his cargo outside of the terminal buildings. The terminal operator at his own expense is forced to transfer them into the building and either leave the goods on the flats or discharge them to the floor of the dock.

On goods loaded to trucks, the same type of service is demanded and received from the terminal operator. Goods must be placed so that the truckman can pick them up directly from the pile and put them on the truck. Heavy packages must be placed at a point so that the truck can be backed up to a depressed loading platform, which allows the floor of the truck to be on the same level as that of the loading platform, and the goods loaded directly to the truck. Truckmen are even demanding that freight be placed so it can be handled directly into the truck without lifting from the floor. Time is of peculiar importance in truck operation and the trend towards this relatively new form of transportation throws added burdens on the terminals to prevent delay. When the truck arrives to load or unload it must be given immediate attention even though it may require the service of terminal employees engaged in other duties. The efficient and systematic routine that may be followed in the handling of tonnage by rail is not here possible.

All of this moving of cargo and spotting it, for the convenience of trucks and providing space for the unloading of trucks, is performed at the expense of the terminal operator without any charge being made for such service.

During the past several years the East Bay terminals have kept their facilities open twenty-four hours a day, [fol. 2013] seven days a week, for the receiving and delivering of freight moving via motor truck. Since September 3, 1935, the terminals have been open from 6 A. M. to 11:00



P. M. It is expected that the night operation will be discontinued before the close of 1935, to be resumed during the Fall rush period in 1936. The night operation is the result of an effort to facilitate the receipt of goods moved by trucks, and to permit the handling of as many trucks as is possible outside of the regular working hours of the terminals. This relieves to some degree the congestion caused on the dock by the handling of goods via motor truck during the time when vessels are loading and discharging. The night operation has resulted in an extra cost for clerking and lighting the docks, which is not borne by the trucking companies. No additional charge is made for receiving or delivering freight from or to trucks outside of the regular hours.

The trend toward the use of trucks by shippers while offering undoubted advantages to the latter, has thrown additional burdens upon the terminals for which they generally feel they should be compensated. To sum up, the operation of trucks on the terminals has been responsible for:

1. Congestion.
2. Rehandling of truck cargo to make it available to the vessel or to concentrate it for pick-up by the truck.
3. Larger sheds with wider center aisles—with increase in terminal fixed charges.
4. Outside turning areas required.
5. Twenty-four hour service to accept night deliveries.
6. Interference with terminal operations.
7. Loss and damage to cargo as a result of the operation of trucks in narrow quarters between piles of merchandise.
8. Theft of cargo by truck drivers.
9. Provision of clerks on short notice to check truck deliveries.
- [fol. 2014] 10. Loss of revenue from car loading and unloading.
11. Interference with stevedoring and increase in time required to load or discharge vessels.

At the present time Los Angeles is the only port assessing a truck charge. At this harbor all tonnage moving to or from the municipal terminals by motor truck, or by any other vehicle other than railroad cars, is required to pay

a charge known as a "truck tonnage charge" for the use of facilities and for traffic control provided by the board of municipal terminals. The rate on all cargo, except lumber, is 5¢ per ton of 2,000 pounds or 40 cubic feet measurement, at the option of the traffic manager. This charge is collected by the wharf operator in the same manner as wharfage or handling charges.

In the early part of 1935 the terminals at Seattle established a 20¢ per ton trucking charge when they did not perform the loading or unloading on freight moved by motor truck from or to points outside of the City of Seattle. In June 1935 the charge was withdrawn primarily because competitive ports would not establish the same charge.

In comparing rail vs. truck tonnage, it may be pointed out that the car loading and unloading charge on rail cargo is a combined charge for services rendered and for facilities used. The latter refers to the investment in truck facilities, substructure and equipment. Question is thus raised as to the need for a parallel charge against the truck or truck-borne tonnage to compensate for the additional facilities necessary to handle it and the extra operating expenses it forces on the terminal.

[fol. 2015.] 15. *Payment Periods:*

The terminals make a practice on shipments received with freight charges collect of advancing such charges to the rail or water carrier. They also grant credit up to thirty days or longer for the payment of the various charges they make against the vessel and the cargo. Extension of credit over long periods of time places a financial burden upon the wharfinger, at the same time unduly favoring certain users of the terminal services. We find that the length of periods over which such credit is extended is not covered by tariff rules and believe that proper provision regarding these items should be provided.

[fol. 2016] 16. *Tariff Absorptions and Allowances:*

Terminals in the San Francisco Bay area provide various absorptions for the purpose of equalizing their respective competitive positions. For example, the switching charge from certain East Bay switching zones to the Oakland and Alameda terminals varies from 34¢ to 45¢ per ton depending upon the origin and destination zones. Where the

charge is 45¢ the terminal makes an absorption of the 11¢ differential.

The absorptions range from such equalization of switching charges within the same or adjacent ports to equalizations between widely separated points on the Bay or even between the San Francisco and Los Angeles harbors.

These latter absorptions are based upon the principle that tonnage begets tonnage. A certain minimum volume of cargo will attract steamship services which will in turn attract more cargo as the service is improved and the shipper takes advantage of certain savings in routing his tonnage through one terminal.

This principle is correct, however, only insofar as one terminal is concerned. It does not apply to a group, for what one gains the other loses. The loser in retaliation offers the same absorptions. The final result is that the tonnage is either divided among the ports in the original proportions, with the terminals absorbing many transportation charges foreign to the wharfinger business, or else certain terminals acquire the bulk of the cargo and the steamship services and the remainder lose both.

While certain of these absorptions may be justifiable, serious question arises concerning the economic justification of others. The general criticisms against absorptions may be summarized as follows:

(1) Results not in an increased tonnage for the Bay area as a whole, but only in the shifting or diversion of tonnage between ports or between terminals within a port.

(2) Results in wharfingers providing or assuming transportation burdens foreign to the terminal business.

(3) Results in cargo being forced into artificial channels and wasteful movements, such as round trip barge or barge and rail movements across the San Francisco Bay before departure in order that the cargo may move through a given terminal.

(4) Shippers routing ocean tonnage via the East Bay terminals may at the same time have up to 15% of the cargo transferred at the terminal's expense to San Francisco for local delivery to consignees. San Francisco shippers enjoy no such privilege.

(5) Results in a dissipation of terminal revenues and a discrimination against the cargo as a whole which must bear the cost.

(6) Removes any natural advantage any one port may have for its local industries.

Additional specific criticisms are given in the detailed analysis to follow.

[fol. 2018] In the following analysis of absorptions, reference is made only to the private terminals on the San Francisco Bay. The Board of State Harbor Commissioners, while prescribing rates and regulations over the San Francisco waterfront, does not itself handle cargo and hence makes no absorptions. Certain steamship lines renting State piers, however, do absorb the differential in the cost to move Oakland and Alameda tonnage to their own assigned piers in San Francisco as compared with the rail charge to the East Bay terminals. This absorption is limited to certain Coastwise and Intercoastal lines.

The Port of Oakland, in Tariff No. 1, provides for a variety of absorptions limited only, as stated in the tariff, to the " \* \* \* discretion of the Port Manager." It is assumed that the port makes substantially the same absorptions as the private terminals with which it competes.

The following analysis of absorptions is made to facilitate an examination of the items to the end that those not economically justified can be cancelled. Every item named in the tariffs of the Respondents appears among the twenty-four types of absorptions listed below. Where the items were found to be similar, they were grouped together for presentation with proper tariff reference. Effort has been made to illustrate the absorptions with typical average cargo movements. Extreme cases were avoided. The emergency rail charges were ignored as they expired June 30, 1936. Reference to dockage charges was likewise omitted as the East Bay terminals do not assess dockage except on the Coastwise and Inland Waterway trades and even here it is an almost indeterminate quantity varied and [fol. 2019] limited by many tariff exceptions and operating practices.

[fol. 2020] *No. 19. Absorption of transfer charges on part lot transfer of canned goods and dried fruit:*

*Tariff References:*

San Francisco Terminals, Car Unloading Tariff,  
C. R. C. No. 1, Item (not shown). Original, Page 19;  
State Terminal—C. R. C. No. 1, Item No. 1200-A.

[fol. 2021] *Explanation:*

When the terminal company provides the car unloading on C. L. shipments the cost of transfer or switching of any part of lot to a second pier will be absorbed by the terminal company. The State Terminal's absorption is limited to carload shipments initially unloaded at the vessel's berth and at which point the car unloading revenue amounts to not less than \$8.00 per car. This terminal further limits its absorption to one switching movement and to cars originating outside the San Francisco switching limits.

*Illustration:*

Assume twenty-ton shipment of canned goods, of which ten tons is drayed to a second pier:

*Terminal Revenues: (Twenty tons)*

Car unloading at 40¢ per ton	\$8.00
------------------------------	--------

*Absorption Expense: (Ten tons)*

Drayage at 50¢ per ton	\$5.00
------------------------	--------

<i>Gross Revenue After Absorption</i>	<u>\$3.00</u>
---------------------------------------	---------------

\$5.00

Absorption =  $\frac{\$5.00}{\$8.00} = 62.5\%$  of the gross revenue.

*Criticisms:*

(1) State Terminal sets no limit upon absorption when freight is transferred by other than switching.

(2) San Francisco Terminals sets no limit upon absorption regardless of method of transfer.

[fol. 2022] *No. 20. Absorption of railroad differentials on carload shipments of canned goods, dried fruit and apricot kernels moving from points within the Oakland and Richmond switching limits to State Terminal, San Francisco, for consolidation with other parcels of freight:*

*Tariff Reference:*

State Terminal—C. R. C. No. 1, Item No. 1204.

*Explanation:*

The State Terminal will absorb the difference (but not to exceed 36¢ per 2,000 pounds) in the transportation cost between (1) the switching charges from point of origin to wharves at Oakland, Alameda or Richmond, whichever is the lesser, and (2) the railroad freight charges from same points of origin to the State Terminal.

*Illustration:*

Assume shipment of canned goods destined to an Inter-coastal port from point within Richmond switching limits:

*Terminal Revenue:*

Service charge per ton	\$ .40
Car unloading charge per ton	.40
	<hr/>
	\$ .80

*Absorption Expense:*

Rail differential per ton	\$ .36
Gross Revenue After Absorption	\$ .44

$$\text{Absorption} = \frac{\$ .36}{\$ .80} = 45\% \text{ of gross revenue.}$$

*Criticisms:*

(1) Absorption is for purpose of meeting East [fol. 2023] Bay competition, but is not restricted to competitive traffic.

(2) Constitutes a transportation service over and beyond the wharfinger's responsibilities for which the shipper does not pay.

No. 21. Absorption of a portion of the State Belt Railroad switching charge:

*Tariff Reference:*

State Terminal—C. R. C. No. 1, Item No. 1205.



*Explanation:*

On Interstate carload freight originating at or destined to points outside of the San Francisco switching limits and switched from or to the State Terminal, the terminal will absorb that portion of the switching charge which is not absorbed by the line haul carriers. This absorption, in practice, is limited to a maximum of 50¢ per car. The line haul carrier will absorb the State Belt Railroad switching charge providing its revenue after absorption is not less than \$11.50. On a carload minimum charge of \$15.00 the carrier can absorb only \$3.50. Balance of 50¢ is absorbed by the terminal.

*Criticisms:*

(1) The item is to meet East Bay competition, but the absorption is made unnecessarily on non-competitive traffic which could not be routed via the East Bay [fol. 2024] on account of lack of steamship services (Example: Trans-Pacific outbound traffic).

(2) Such absorption should be further limited to instances when water carriers do not make the absorption here covered.

*No. 22. Absorption of service charges on trans-shipped Coastwise traffic:*

*Tariff Reference:*

State Terminal—C. R. C. No. 1, Item No. 1250-A.

*Explanation:*

The terminal will absorb the service charges on Coastwise cargo trans-shipped by water from or to other public terminals provided the service charges have been assessed by such other terminals and the cost of trans-shipping is borne by the ocean carrier.

*Criticism:*

(1) The application of the service charge is removed and replaced by a 25¢ per ton checking charge. See Tariff Item No. 100-A. Question is raised as to the application of the absorption in trades other than Coastwise.

[fol. 2025] No. 23. Absorption of "handling in" and "handling out" charges upon wharf demurrage cargo:

*Tariff Reference:*

State Terminal—C. R. C. No. 1, Items Nos. 1210, 1215, 1220, 1225, 1230, 1235, and 1240-A.

*Explanation:*

The State Terminal assesses certain handling charges on cargo held under wharf demurrage.

*Item No. 120(E) reads:*

"Handling in" (including delivery to berth of vessel alongside) 35¢ per ton.

*Item No. 120(F) reads:*

"Handling out" (including delivery to truck or car platform) 50¢ per ton.

*Item No. 125 defines the handling service as follows:*

"The rates for labor of handling cover transit of cargo from shed door to terminal platform into shed, and delivery from shed to shed door or terminal platform. They do not cover unloading from or loading into car or truck."

This item further states that labor handling rates on all cargo delivered for a specific vessel and held beyond the free time period will be as shown in Item No. 130; but such item quotes rates on specific commodities only as follows:

*Item No. 130:*

Canned foods, dried fruits, beans, kindred products—35¢ per ton. Lumber—90¢ per M. F. B. M.

[fol. 2026] There is apparently a great deal of ambiguity and overlapping in the above definitions of terms and the quotation of rates making the interpretation of the tariff confusing if not impossible.

The absorption items referred to in the above tariff references provide for absorption of the "handling in" or "handling out" charges under the following circumstances and conditions:

*Item No. 1210:*

"Handling in" charge absorbed if consigned to vessel sailing within thirty days from date of arrival of merchandise and providing car unloading revenue is not less than \$8.00 per car.

*Item No. 1215:*

"Handling out" charge absorbed when merchandise ordered delivered to vessels in berth alongside this terminal.

*Item No. 1220:*

"Handling out" charge absorbed when merchandise ordered loaded into railroad cars and loading is performed by the terminal. (Note: No minimum car loading revenue prescribed.)

*Items Nos. 1225 and 1230:*

"Handling in" charges will be absorbed on all merchandise delivered by vessels in Alaskan, Hawaiian and/or Coastwise trade, and also upon sugar regardless of trade, when delivery is made to upper deck (terminal's option) and cost of piling is assumed by [fol. 2027] and/or performed by delivery vessels.

*Item No. 1235:*

Waives up to 80% of the "handling out" charge on canned salmon discharged at the State Terminal and ordered out for delivery via trucks or drays to other San Francisco piers providing that through its own inability the terminal does not furnish the labor.

*Item No. 1240-A:*

On Alaska salmon and/or Hawaiian pineapple similarly delivered to trucks or drays for delivery to other San Francisco piers the terminal will absorb 50% of the "handling out" charge (Item No. 120(F)) provided that the merchandise had been delivered to the terminal direct from the vessel and assessed service charges.

*Criticisms:*

(1) Definitions of "handling in" and "handling out" services given in Item No. 120 are vague and incomplete.

(2) No clear distinction between the "handling in" and "handling out" services named in Item No. 120 on the one hand, and the "labor handling" services defined in Item No. 125 on the other; yet different rates are quoted for each.

(3) Question is raised as to the purpose or necessity of restricting Item No. 1210 to merchandise consigned to a specific vessel. Cargo on wharf demurrage is seldom consigned to specific vessels.

[fol. 2028-2032] (4) If a minimum car loading revenue is required in Item No. 1210 before the absorption applies, why is not a similar minimum required under Item No. 1220?

(5) Items Nos. 1225 and 1230 refer to delivery at terminal's option to upper deck; but this deck is owned and operated by the State and is not under the control of the State Terminal. Clarification of the terminal's authority over upper deck is desirable.

[fol. 2033] 17. Differentials:

Certain terminals have expressed the need for a differential in their charges, particularly charges against the vessel, to compensate for their remote location, lack of steamship services and other competitive disadvantages. Other terminals more favorably situated expressed the view that all rates should be on a parity, or if differentials were granted, they should be limited to charges against the vessel.

The subject of differentials has always been a troublesome one, whether it appears in the terminal business, the transportation field or elsewhere. No attempt is made at this time to justify one position or the other.

[fol. 2034] 18. Leases and Rentals:

Portions of terminal properties or lands adjacent thereto are found leased by the terminals to industrial concerns

which have need for wharfinger services. The broad question was raised as to whether the rental charge made such concerns was reasonable as of itself or whether it might constitute a form of rate reduction. Particular question is raised concerning leases of property which grants the lessee use of dock facilities without charge.

At the time the Parr-Richmond Terminal Company acquired the San Pablo Dock, it likewise took title to adjoining parcels of land, portions of which were under lease to the Philippine Refining Corporation of New York and the Pacific Molasses Company, Ltd. These leases provided that the lessees should have certain use of the dock facilities without charge. Serious question now arises as to whether or not this constitutes a violation of the published tariffs of the Parr-Richmond Terminal Company.

[fol. 2035] 19. Shipper Control of Terminals:

Question has been raised by many parties contacted in this investigation to the effect that terminals *controlled by* large shipper interests as Cal. Pack. Corp. have been able to exert undue pressure upon shippers to route their cargo via such terminals.

This pressure is allegedly applied in *reciprocal business* relationships between the terminal's parent company on the one hand and the shippers on the other, who may thereby be threatened with loss of sales to the parent if their tonnage fails to move over the subsidiary terminal.

This pressure by shipper controlled terminals may further be exerted against steamship companies by requiring them to divert freight tonnage through the controlled terminal or to offer services to that terminal not offered other terminals by promise of increased tonnage or threat of withdrawal of existing tonnage.

In our investigation, however, we have not been in a position to prove or disprove such allegations nor to gauge their influence. It is apparent, however, that such pressure on the routing of cargo might cause it to follow a more costly route to tidewater than would otherwise be the case. The terminal benefiting from such routing would be forced to absorb this increased cost in the form of absorptions. These absorptions are considered elsewhere in this report.

[fol. 2036] 20. Tariffs, Suggested Improvements in the Form of:

In checking the various wharfinger tariffs on file with this Commission, we find a lack of conformity with the standard rules of tariff publication generally applicable to public utilities.

Summarized briefly, the majority of tariffs lack the following, to wit:

1. Table of Contents.
2. Explanation of Abbreviations.
3. Insufficient definition of certain terms used.
4. Failure to state exceptions which are made in the application of certain rates.
5. Failure to define terms used.
6. Unit upon which rates apply not shown on each page.
7. Use of ambiguous language in certain rules and regulations.
8. Failure to state package requirements in connection with certain commodities.
9. General rules and regulations not published in appropriate section or part of the tariff.
10. Failure to provide cross-references to rates, rules or regulations to be used in conjunction with one another.
11. Failure to state the application of varying rates and minimum weights.

We suggest that the above deviations from accepted standard practices in tariff construction be eliminated in the future.

[fol. 2037] 21. Operation as Public Utility Without Tariffs:

This investigation embraces the determination as to whether or not certain concerns not now subject to the Commission's jurisdiction are engaged in business as public wharfingers, and/or carloaders, and/or warehousemen, and should therefore be required to file tariffs with this Commission. The companies so concerned are as follows:

Interstate Terminal.

Albers Brothers Milling Company.



J. M. Atthowe doing business as Berkeley Transportation Co.

General Steamship Corporation, Ltd.

The Paraffine Companies, Inc.

G. B. Lauritzen, H. P. Lauritzen and N. P. Bush, co-partners, doing business as Richmond Navigation & Improvement Company.

Sudden & Christenson.

Williams Dimond & Co., Ltd.

Islais Creek Grain Terminal Corporation.

The Pacific Oriental Terminal Company, Ltd., and Rhodes-Jamieson, Ltd., have tariffs on file covering car-loading and unloading. The question as to whether they also engage in public wharfinger operations is to be determined.

#### [fol. 2038] 22. Railroad Operated Terminals:

Little or no reference has been made in this report to the three railroad terminals maintained on the San Francisco Bay by Southern Pacific Company, The Western Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, respectively. It is sufficient to say that the rail carriers are not the factors here that they are at many Atlantic ports where terminal charges are waived when the carrier gets the line haul. The facilities here are far from modern, little tonnage moves over them and the carriers furthermore have in the past evinced a willingness to assess the "going charges."

[fol. 2039]

### Part II

#### *Supporting Data*

#### [fol. 2040] 1. Definition or Explanation of Terms Used.

##### 1. *Classification of the Steamship Trades:*

###### (a) *Coastwise:*

Service along the Pacific Coast of the United States between the Mexican and Canadian borders, including such service when via British Columbia ports.

(b) *Inland Waterway:*

Service between San Francisco, Oakland, Alameda or Richmond, California, and ports or points located on San Francisco Bay and inland waterways tributary thereto, but not via the Pacific Ocean.

(c) *Intercoastal:*

Service between San Francisco Bay ports and ports in the United States on the Gulf of Mexico or Atlantic Ocean.

(d) *Hawaiian:*

Service between San Francisco Bay ports and ports in the Hawaiian Islands.

(e) *Alaskan:*

Service between San Francisco Bay ports and ports in Alaska.

(f) *Trans-Pacific:*

Service between San Francisco Bay ports and points west of the 170th Meridian of West Longitude, (principally to Asia, Philippines, Australasia and East Coast of Africa.)

(g) *Foreign:*

Service to points other than heretofore described, (principally to Europe, Central and South America and Caribbean Sea ports.)

[fol. 2041] (h) *Offshore:*

Embraces all the above trades with the exception of "Coastwise" and "Inland Waterway."

2. *Definition and/or Explanation of Wharfinger Terms and Charges:*

(a) *Service Charges:*

Except as otherwise provided, the Service Charge covers any one or more of the services described below, and shall be assessed against all vessels:

1. Arrange berth for vessel.
2. Arrange for cargo space on dock.

3. Check cargo to or from vessel.
  4. Receive outbound cargo from shippers.
  5. Deliver inbound cargo to consignees.
  6. Make up dock manifests and loading lists or tags covering cargo loaded aboard vessels.
  7. Prepare over, short and damage reports.
  8. Order cars.
  9. Give information to shippers and consignees regarding cargo, sailing and arrival dates of vessels, and other incidental data.
  10. Lighting wharf.
- (Service Charge does not include any labor of handling cargo.)

*(b) Dockage Charges:*

The charge assessed against a vessel for berthing at a wharf, pier or seawall structure, or coming within a slip, channel, basin or canal.

*(c) Toll Charges:*

The charge for cargo conveyed on, over or through any wharf, pier or seawall structure, both inward and outward, or loaded or discharged while the vessel is moored in any slip, basin, channel or canal.

*(d) Wharf Demurrage Charges:*

The charge assessed against merchandise which remains on the terminal beyond the free time period.

*(e) Pool Car Assembling Charges:*

The charge for assembling small lots of freight from two or more shippers to make up the minimum weight for a carload watershipment, and forwarding it to destination for delivery to two or more consignees.

*(f) Charge for Handling Rolls of Board in Open Cars:*

The charge for moving cars on dock and covering contents with tarpaulins.

[fol. 2042] (g) *Charge for Weighing:*

1. Charge for weighing merchandise by individual package or by hand-truck loads.
2. Charge for weighing carload lots over railroad track scales and issuance of Weighmaster's certificate.

(h) *Charge for Taring:*

The charge for removing goods from containers, weighing containers and replacing goods in containers.

(i) *Charge for Case Labeling:*

The charge for attaching paper labels to the outside of cases.

(j) *Charge for Case Strapping:*

The charge for placing wire strapping around cases.

3. *Cargo N. O. S.:*

Cargo not otherwise specified or indicated by name in the terminal tariffs. In the application of service charges, toll and wharf demurrage relatively few specific commodity rates are quoted. The "Cargo N. O. S." or "Merchandise N. O. S." items therefore embrace a substantial part of the total tonnage moving.

4. *Gross Registered Tonnage:*

A measure of the internal capacity of the entire ship, in some measurement rules including superstructures, in terms of approximate tons based on space. For this purpose 100 cu. ft. of closed-in space are designated as one ton.

5. *Net Registered Tonnage:*

A figure, measured in the same units as the gross tonnage, obtained by deducting from the gross tonnage allowances made for the ship's machinery, navigation and propelling space and quarters for officers and crew. The net tonnage is thus intended to be a measure of the passenger and cargo-

carrying or earning capacity of the ship. It is usually [fol. 2043] about 63 per cent of the gross tonnage.

#### 6. *Under Deck Tonnage:*

Under deck tonnage comprises the exact measurement of the total space below the uppermost full length deck, (only applicable on River Steamers).

#### [fol. 2044] 2. Encinal Terminals:

Respondent, Encinal Terminals, is a corporation organized in October, 1924, and existing under and by virtue of the laws of the State of California. It is engaged, among other things, in the warehouse and wharfing business as a public utility as that term is defined in Sections 2 and 214 of the Public Utilities Act of the State of California.

Said Respondent was organized for the purpose of operating docks and wharves for the handling of water-borne commerce of the California Packing Corporation, The Alaska Packers Association and their subsidiary corporations. The object was to eliminate the expense theretofore incurred in handling such commerce over the various piers in San Francisco and to provide economies in the storage of goods at tidewater facilities. These two factors coupled with the ownership of suitable lands in Alameda by the Alaska Packers Association were the determining reasons for the establishment of present facilities by Respondent. Prior to the completion of the first two units, the original plan of handling only the tonnage of the parent companies and their subsidiaries was altered. Instead the facilities, when opened in the Fall of 1925, were made available to the public and have been operated since that date as a public wharfing business. In May, 1935, Respondent began warehouse operations limiting the service to certain commodities only.

Property used in the warehouse and wharfing operations is located in the City of Alameda, Alameda County, [fol. 2045] California, at the Foot of Jay Street with the wharves and sleds constructed upon a body of water known as Alaska Basin which is dredged at right angles to the San Antonio Estuary (also known as Oakland Estuary).

Investment in buildings, construction and equipment as of December 31, 1934, on undepreciated and depreciated are as follows:

Item	Undepreciated value as of 12/31/34	Depreciated value as of 12/31/34
Buildings and Construction	\$995,421.84	\$549,094.92
Equipment	37,370.88	14,361.54
	<hr/> \$1,032,792.72	<hr/> \$563,436.46

The purchase of the original buildings and equipment by Respondent from the Alaska Packers Association in 1929 was authorized by this Commission in Decision No. 21653, decided October 4, 1929, in Application No. 15931. Land used in wharfing operations is leased from the Alaska Packers Association.

Respondent is authorized to issue 25,000 shares of stock of a par value of \$100.00 per share, of which 8,815 shares are issued and outstanding, and all of which shares are owned and held by the Pacific Industries, Ltd.

Said Pacific Industries, Ltd., is a corporation organized under the laws of the State of California in 1928 by the California Packing Corporation and Alaska Packers Association for the purpose of owning and holding the capital stock of the Respondent, which it has owned since the date of its organization. Capital stock of said Pacific Industries, [fol. 2046] Ltd., is owned in its entirety by the Alaska Packers Association.

Said Alaska Packers Association is a corporation organized under the laws of the State of California, and is engaged exclusively in the packing of salmon, with canning plants located in Alaska and State of Washington. Approximately 84% of the outstanding capital stock of said Alaska Packers Association is owned by the California Packing Corporation, which operates the business of said Alaska Packers Association as a subsidiary corporation.

Said California Packing Corporation is a corporation organized in 1916 under and by virtue of the laws of the State of New York, with its principal office located in the City of San Francisco, State of California. It is engaged, either directly or through its subsidiary corporations, in the business of packing and distributing many kinds of food



products consisting principally of dried fruits, canned fruits and vegetables, canned fish, canned Hawaiian pineapple and coffee, and is one of the largest of its kind in the world. Plants are located in the States of California, Oregon, Washington, Idaho, Utah, Wisconsin, Illinois, Minnesota, Florida, New York and in Alaska, the Hawaiian and Philippine Islands.

Respondent has no outstanding bonds or notes.

Revenues and expenses from wharfinger operations, January 1, 1930 to October 31, 1935 inclusive are as follows:

[fol. 2047]

Year	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1930	\$471,458 41	\$462,238 38	\$9,220 03	
1931	409,933 25	414,588 24		\$4,654 99
1932	392,566 33	381,362 39	11,203 94	
1933	429,136 91	435,752 74		6,615 83
1934	477,171 82	541,947 33		64,775 51
1935 (10 mos.)	404,447 22	431,074 07		26,623 85
	<u>\$2,584,713 94</u>	<u>\$2,666,960 15</u>	<u>\$20,423 97</u>	<u>\$102,670 18</u>
				20,423 97
Net operating loss 1/1/30 to 10/31/35				\$82,246 21

Rental and lease arrangements in effect include only that of land used in the wharfinger operations prior to May, 1935. In 1934 the Alaska Packers Association started construction of a terminal unit on the west side of Alaska Basin to provide additional space for cargo and ships handled by Respondent. While the said terminal unit was completed in May, 1935 and put in operation, the purchase thereof and adjustment of existing land lease between Respondent and Alaska Packers Association has not as yet been effected.

The existing lease is dated July 1, 1929 between the Alaska Packers Association as lessor and Encinal Terminals as lessee, the term to begin from the date thereof to and including February 4, 1945. Among other things, the lease provides that all taxes and assessments upon the land shall be borne by lessor and upon the improvements by lessee. Rentals for land involved in the lease and estimated to be 33 acres (does not include land used in improvement referred to above) are as follows:

\$11,000.00 per month from date of lease to Jan. 5, 1934.

13,200.00 per month on Jan. 5, 1934 to Jan. 5, 1935.

11,000.00 per month on Jan. 5, 1935 to Jan. 5, 1939.  
 15,400.00 per month on Jan. 5, 1939 to Jan. 5, 1945.

Generally described, Respondent's property consists of [fol. 2048] three wharves and sheds, together with spur tracks, storage yard, water works, pipe lines, roadways, equipment and appurtenances necessary to carry on Respondent's business. Rail switching service is performed by the Alameda Belt Line which interchanges with The Atchison, Topeka & Santa Fe, Southern Pacific and Western Pacific. Respondent also acts as a freight agent for The Atchison, Topeka & Santa Fe and Western Pacific in operating a less-than-carload freight depot on the premises for the two carriers.

Respondent performs the following wharfinger services as defined in its tariff, to wit: (see Definition of Terms, page 132)

(1) Service and Charges for the Account of the Vessel:

- (a) Service Charges:
- (b) Dockage Charges:
- (c) Miscellaneous Charges:

- 1. Charge for water supplied to vessels.
- 2. Charge for electric current supplied to vessels.
- 3. Taking, releasing and shifting lines between dock and the vessel.

(2) Service and Charges for Account of the Cargo:

- (a) Toll Charges:
- (b) Wharf Demurrage Charges:
- (c) Pool Car Assembling Charges:
- (d) Charge for Handling Rolls of Boxboard in Open Cars:
- (e) Charge for Weighing:
- (f) Charge for Taring:
- (g) Charge for Case Labeling:
- (h) Charge for Case Strapping:
- (i) Stencilling Charge:

(j) Scraping and Remarking Charge:

(k) Charge for Loading or Unloading of Cars or Trucks:

Following are the tariffs filed with this Commission covering wharfinger and warehouse services by the Respondent:

*Encinal Terminals Tariff No. 1, C. R. C. No. 1* (Original Tariff effective June 1, 1929)

[fol. 2049] Naming Rates, Charges, Rules and Regulations for Service, Dockage, Toll, Wharf Demurrage, Loading and Unloading of Cars or Trucks, Weighing, and Miscellaneous Charges Assessed against the carrier and shipper or consignee.

*Encinal Terminals Tariff No. 2, C. R. C. No. 2* (Original Tariff effective June 1, 1929).

Naming Rules and Regulations for Absorption of Charges.

*Encinal Terminals Tariff No. 3, C. R. C. No. 3* (Original Tariff effective January 31, 1933)

Naming Rates and Charges for Storage and Handling of Copra Meal, in bags.

*Encinal Terminals Merchandise Warehouse Tariff No. 1, C. R. C. No. 1* (Original Tariff effective May 4, 1935).

Naming Rates, Charges, Rules and Regulations for Storage and Incidental Handling of Specific Commodities.

Steamship services available at so-called water "terminal" rates from and to Encinal Terminals are as follows:

*Intercoastal-Atlantic: (via Panama Canal)*

Served by all carriers in the trade, both Eastbound and Westbound. Freight steamers usually call direct to load or discharge but exercise their option to barge cargo between the Terminal and their San Francisco piers when operating conditions or volume of freight does not warrant the shifting of steamer. Passenger steamers operated by three of the carriers in the trade do not shift from their San Francisco piers and all cargo is barged from or to the San

Francisco piers. All carriers absorb cost of barging cargo when performed.

*Intercoastal-Gulf: (via Panama Canal)*

The service by the lines in this trade is identical with that shown above for Intercoastal-Atlantic.

[fol. 2050] *Coastwise: (Between California, Oregon, Washington, & British Columbia Ports)*

Served by several of the carriers in the trade either by calling direct or barging the cargo at their expense between the Terminal and their San Francisco piers. Other carriers in the trade restrict service to direct calls only for a minimum ranging from 75 tons to 500 tons per vessel.

*European: (Service between Pacific Coast & Europe via Panama Canal)*

Served by all carriers in the Eastbound trade by direct call only for a minimum of approximately 100 tons per vessel. Steamship conference ruling prohibits barging at expense of carrier when cargo available does not approximate 100 tons per vessel. Westbound European cargo is delivered by direct call of the vessel or barged at the expense of the carrier as inducements offer. Such cargo for Alameda discharge is accepted at the carrier's option.

*Mexican: (Service between Alameda and West Coast of Mexico)*

The two carriers in this trade serve Encinal Terminals through the medium of large service as the freight offerings are small, absorbing the cost thereof between the San Francisco piers and the Terminal.

*Transpacific:*

Served irregularly by direct call of vessels as inducements offer.

*Hawaiian:*

The carrier in this trade maintains a weekly service between the principal Hawaiian ports and the

Terminal and alternate weeks between the smaller Hawaiian ports. Steamers usually call direct to load or discharge but when it is necessary to barge cargo from or to San Francisco piers and the Terminal for operating convenience, such barging is absorbed by the carrier.

*Other Services:*

Served irregularly by direct call of vessels as inducements offer.

[fol. 2052] 3. Howard Terminal:

Respondent, Howard Terminal, is a corporation organized and existing under and by virtue of the laws of the State of California. It is engaged, among other things, in the warehouse and wharfinger business as a public utility as that term is defined in Section 2 and 2½ of the Public Utilities Act of California. As a public wharfinger, the Respondent has been continuously engaged for a period of thirty-five years.

Property used in the warehouse and wharfinger operations is located in the City of Oakland, Alameda County, California, lying southerly of First Street between Market and Linden Streets and extending to the Oakland Estuary on San Francisco Bay.

Investment in land devoted to wharfinger purposes consists of 7.2799 acres, with an appraised value of \$43,560.00 per acre, or \$317,112.44. The book value of the land (original cost) was \$85,597.79. The undepreciated and depreciated value as of December 31, 1934, on investments in buildings, construction and equipment are as follows:

Item	Undepreciated Value as of 12-31-34	Depreciated Value as of 12-31-34
Buildings and Construction	\$410,147.49	\$231,181.23
Equipment	52,488.64	13,731.42
	<hr/> \$462,635.83	<hr/> \$244,912.65

The capital stock of Howard Terminal, authorized and issued, consists of 2,500 shares of common stock of the par [fol. 2053] value of \$100.00 per share, the ownership of the stock being as follows:

Balfour Guthrie Investment Co. (See note)	1,375 shares
Helen L. Howard and Charles P. Howard, Trustees	1,125 shares
	2,500 shares

Note: This company is affiliated with Balfour Guthrie & Co., Ltd., the latter being a world-wide shipping concern with many ramifications, including that of foreign selling agent for the California Packing Corporation and Alaska Packers Association. The two last mentioned companies are referred to under Encinal Terminals data, pages Nos. 135-137.

Respondent has no bonds authorized, issued or outstanding, but does have outstanding in notes \$83,000.00 with interest at five and one-half per cent per annum.

Revenues and expenses from public utility operations by Respondent, January 1, 1930, to October 31, 1935, inclusive, are as follows:

Year	Wharfinger Services			
	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1930	\$261,369.52	\$234,058.06	\$27,311.46	
1931	271,150.97	238,166.00	32,984.97	
1932	221,361.48	216,559.56	4,801.92	
1933	244,355.38	224,877.09	19,478.29	
1934	231,021.76	260,542.56		\$29,520.80
1935 (10 mos.)	215,896.53	224,710.52		8,813.99
	\$1,445,155.64	\$1,398,913.79	\$84,576.64	\$38,334.79
			38,334.79	
			\$46,241.85	Net Operating Income, 1-1-30 to 10-31-35

[fol. 2054] The following revenues and expenses from warehouse operations are for the period January 1, 1930, to December 31, 1934:

Year	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1930	\$15,821.84	\$21,133.92		\$5,312.08
1931	12,460.94	21,284.02		8,823.08
1932	12,648.11	15,328.59		2,680.48
1933	11,518.37	14,982.40		3,464.03
1934	10,108.54	13,239.09		3,130.55
	\$62,557.80	\$85,968.02		
Net operating loss 1/1/30 to 12/31/34				\$23,410.22



Rents and leases in effect at Respondent's wharfinger facilities are:

Lease of approximately 10,000 square feet of space within the walls of Terminal Building Unit No. 6, formerly devoted to public utility wharfinger service, to the Kieckhefer Container Company, which engages in the manufacture of fibreboard containers, on a basis of three cents (3c) per square foot per month for a period of three (3) years. This Commission approved the lease in Decision No. 28116, decided July 12, 1935, in Application No. 19974.

In the conduct of Respondent's wharfinger business, it leases from the City of Oakland certain properties. The first lease, known as Lease No. 1, involves the outer ends of Pier Nos. 1 and 2 which are located upon tidelands under the jurisdiction of the City of Oakland. Among other things, [fol. 2055] such lease provides substantially the following terms and conditions, to wit:

**Rental:** That the Respondent, as Lessee, shall pay to the City of Oakland, as Lessor, five per cent (5%) of the gross revenue derived from Toll and Dockage charges for overhead expense, the remaining ninety-five per cent (95%) of the gross to be split eighty per cent (80%) going to the Lessee and twenty per cent (20%) going to the Lessor.

All expenditures for maintenance, dredging or improvements are deducted from the balance of ninety-five percent (95%) of gross revenue referred to above before the division of revenue is made between the Lessor and Lessee. On monies advanced by the Lessee for such purposes, interest at five per cent (5%) per annum is allowed until reimbursed from the gross revenue obtained as stated above.

**Term:** The term of the lease shall be thirty-five (35) years from and after November 5, 1914. Title to all buildings and improvements upon the demised premises shall revert to the City of Oakland when lease expires.

The second lease between the City of Oakland, as Lessor, and the Respondent, as Lessee, known as Lease No. 2, involves the Quay Wall Berth (also known as Howard Terminal Berth No. 3) and was executed between the parties on December 1, 1935, for a term of one year. Among other things, such lease provides substantially the following terms and conditions, to wit:

[fol. 2056] **Rental:** The lessee shall pay as an annual rental the sum of \$3,960.00 plus the gross revenue obtained from Toll and Dockage Charges on cargo handled through the facility, with a guarantee that such Toll and Dockage charges shall not be less than \$5,000.00 per annum. In addition, the Lessor retains gross revenue derived from certain short period Wharf Demurrage charges on cargo held in the facility. All expenditures for maintenance, dredging or improvements shall be at the sole cost and expense of the Lessor.

Both of aforementioned leases with the City of Oakland provide that the Lessee shall assess and collect Toll and Dockage charges in accordance with the published tariff of the City of Oakland as Lessor. Inasmuch as the City of Oakland controls by water the ingress to and egress from all the wharfing facilities operated by the Respondent, all gross revenue derived from Toll and Dockage charges on cargo handled from or to vessels must be surrendered either in part or in their entirety to the City of Oakland in accordance with the leases as outlined above.

For many years prior to December 1, 1935, the aforementioned second lease involving the use of the Quay Wall Berth by the Respondent provided substantially the following terms and conditions, to wit:

**Rental:** The Lessee to pay the sum of \$1,800.00 as yearly rental plus ten per cent (10%) of the gross revenue derived from Toll and Dockage charges on cargo handled through the facility for overhead expense to the Lessor, the remaining ninety per cent (90%) of the gross to be split fifty-fifty between the Lessor and the Lessee. All expenditures for maintenance, dredging or improvements to be deducted from the balance of ninety per cent (90%) of the gross [fol. 2057] revenue referred to above before the division of revenue is made between the Lessor and the Lessee. On monies advanced by the Lessee for such purposes, interest at five per cent (5%) per annum was allowed until reimbursed from the gross revenue obtained as stated above.

Respondent owns certain land and buildings adjacent to its public utility wharfing properties which are leased to private industries.

Land within the boundaries previously mentioned consists of 15.43 acres and is owned by the Respondent. That portion of the land devoted to public utility wharfing operations is 7.2799 acres upon which stand six (6) Terminal Unit Buildings. The balance of the land and buildings thereon is used in warehouse business or leased to private companies.

Generally described, Respondent's property consists of certain piers, docks, warehouses, storage yard, machine shop, sheds and other buildings, equipment and appurtenances necessary to carry on Respondent's business. The only mechanical bulk cargo handling equipment on San Francisco Bay is located on this property.

Facilities for berthing vessels consists of two so-called "finger type" piers (Nos. 1 and 2) and Berth No. 3 Quay Wall and are available at all times for shipping. Rail switching services from and to the property are performed by the Howard Terminal Railway, which interchanges with the Southern Pacific Company and The Western Pacific Railroad Company.

[fol. 2058] Respondent performs the following wharfing services as defined in its tariff, to wit: (See definition of Terms, Page 132.)

(1) *Service and Charges for the Account of the Vessel:*

- (a) Service Charges.
- (b) Dockage Charges.
- (c) Miscellaneous Charges:

Taking, releasing and shifting lines between dock and the vessel.

(2) *Service and Charges for the Account of the Cargo:*

- (a) Toll Charges.
- (b) Wharf Demurrage Charges.
- (c) Pool Car Assembling Charges.
- (d) Charge for Weighing.
- (e) Charge for Taring.
- (f) Charge for Labeling—Case.
- (g) Charge for Strapping—Case.
- (h) Charge for Stencilling.
- (i) Charge for Scraping and Remarkings.
- (j) Charge for Loading or Unloading of Cars or Trucks.

The following are tariffs filed with this Commission covering wharfinger services by the Respondent:

*Howard Terminal Tariff No. 1, C. R. C. No. 1: (Original tariff effective June 1, 1929).*

Naming Rates, Charges, Rules and Regulations for Tolls, Service, Dockage and Miscellaneous Services which are usually assessed against the carrier.

*Howard Terminal Tariff No. 2, C. R. C. No. 2: (Original tariff effective June 1, 1929).*

Naming Rates, Charges, Rules and Regulations for Wharf, Demurrage, Weighing, Loading and Unloading of Cars or Trucks and Miscellaneous Services which are usually assessed against the shipper or consignee.

*Howard Terminal Tariff No. 3, C. R. C. No. 3: (Original tariff effective June 1, 1929).*

Naming Rules and Regulations for Absorption of Charges.

[fol. 2059] Following are tariffs filed covering warehouse services:

*Howard Terminal Warehouse Tariff No. 13, C. R. C. No. 13: (Original tariff effective August 5, 1926, filed by L. A. Bailey, Agent).*

Naming Charges for Storage and Incidental Handling of Specific Commodities.

*California Warehouse Tariff Barge Warehouse Tariff No. 1-E, C. R. C. No. 83, Howard Terminal Participant: (Original tariff effective June 1, 1935, filed by L. A. Bailey, Agent).*

Naming Charges for Storage and Incidental Handling of Merchandise.

Steamship services available at so-called water "terminal" rates from and to Howard Terminal are as follows:

*Intercoastal—Atlantic (via Panama Canal):*

Served by all carriers in the trade, both eastbound and westbound. Freight steamers usually call direct to load or discharge, but exercise their option to barge cargo be-

tween the Terminal and their San Francisco pier when operating conditions or volume of freight does not warrant the shifting of steamer. Passenger steamers operated by three of the carriers in the trade do not shift from their San Francisco piers and all cargo is barged from or to the San Francisco piers. All barging costs absorbed by the carriers.

*Intercoastal—Gulf (via Panama Canal):*

Served by all carriers in the eastbound trade and by one (of two) carrier in the westbound trade. Steamers usually call direct to load or discharge, but exercise their option to barge cargo between the Terminal and their San Francisco pier when operating conditions or volume of [fol. 2060] freight does not warrant the shifting of steamer.

*Coastwise (California, Oregon, Washington and British Columbia Ports):*

Served by several of the carriers in the trade, either by calling direct or by barging the cargo at their expense between the Terminal and their San Francisco piers. Other carriers in the trade restrict service to direct calls only for a minimum of 100 tons per vessel, but inasmuch as they will not assume Service Charges charged by the Terminal it is not practical to offer services other than those regularly serving the Terminal.

*European (Service between Pacific Coast and Europe via Panama Canal):*

Served by all carriers in the eastbound trade by direct call only for a minimum of approximately 100 tons per vessel. Steamship conference ruling prohibits barging at expense of carrier when cargo available does not approximate 100 tons per vessel. Westbound European cargo is delivered by direct call of the vessel or barged at the expense of the carrier as inducements offer. Such cargo for Oakland discharge is acceptable at the carrier's option.

*Mexican (Service between Oakland and West Coast of Mexico):*

The two carriers in this trade serve Howard Terminal through barge service between San Francisco piers and the Terminal, absorbing the cost thereof.

*Transpacific:*

[fol. 2061] Served irregularly by direct call of vessels as inducements offer.

*Other Services:*

Served irregularly by direct call of vessels as inducements offer.

[fol. 2062] 4. *Parr-Richmond Terminal Corporation, Ltd.:*

Respondent, Parr-Richmond Terminal Corporation, Ltd., is a corporation organized in July 1927 and existing under and by virtue of the laws of the State of California. It is engaged, among other things, as a public utility wharfinger as that term is defined in Section 2 of the Public Utilities Act of California.

Said Respondent was organized for the purpose of taking over the obligations and responsibility for control and management of the Harbor of Richmond, together with its facilities and adjacent industrial properties, located in the City of Richmond, Contra Costa County, California, for a period of fifty (50) years under a lease between the City of Richmond, as lessor, and Parr Terminal Company, as lessee. The parent company of the Respondent, viz., Parr Terminal Company, assigned the lease to the Respondent on May 11, 1928, who has since operated the demised premises as lessee.

Property used in the wharfinger business is in the City of Richmond, Contra Costa County, California, and consists of separate units known as Parr-Richmond Terminals Nos. 1, 2, 3 and 4, respectively. Parr-Richmond Terminal No. 1 (Outer Harbor) is located at the foot of Garrard Boulevard; Parr-Richmond Terminals Nos. 2 and 3 (Inner Harbor) are located at the foot of South Tenth Street; and Parr-Richmond Terminal No. 4 (Point San Pablo or Western Harbor), is located at the end of the Peninsula dividing San Francisco and San Pablo bays.



Investment in buildings, construction and equipment operated and used by Respondent in the wharfinger business, [fol. 2063] as of December 31, 1934, is as follows:

Item	Undepreciated value as of 12-31-34	Depreciated value as of 12-31-34
<i>Buildings and construction:</i>		
By City of Richmond	\$ 883,000.00	
By Parr-Richmond Terminal	273,000.00	
	<hr/>	
	\$1,156,000.00	
<i>Equipment:</i>		
By Parr-Richmond Terminal	5,825.17	\$4,057.82
	<hr/>	
Total	<hr/>	
	\$1,161,825.17	
	<hr/>	

The land used in wharfinger operations is owned by the City of Richmond, except for about eleven acres purchased by the Respondent at a cost of \$19,236.

Other expenditures on the Richmond Harbor included approximately \$1,400,000 by the City of Richmond and \$842,788 by the Federal Government for dredging, training walls, bulkheads and similar improvements to make the wharves and docks available to ocean-going vessels in all trades.

Respondent is authorized to issue 5,000 shares of common stock at a par value of \$100 per share, of which 2,015 are issued and outstanding, all of which shares are owned and held by the Parr Terminal Company, parent company of the Respondent.

Said Parr Terminal Company is a corporation organized under the laws of the State of California and is engaged in the leasing or sub-leasing of industrial lands in the City of Oakland, California, and elsewhere.

Respondent was authorized by this Commission in Decision No. 19930, dated June 25, 1928, in Applications Nos. 14562 and 14721, to issue \$400,000 in bonds bearing interest at six and one-half per cent per annum, of which \$263,000 are issued and outstanding. Notes payable as of December 31, 1934, total \$47,755.47, with rate of interest varying from six per cent to seven per cent.

Revenues and expenses from wharfinger operations, January 1, 1930, to October 31, 1935, inclusive, are as follows:

Year	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1930	\$88,089.80	\$63,833.69	\$24,256.11	
1931	89,221.96	79,755.97	9,465.99	
1932	105,855.71	92,405.64	13,450.07	
1933	128,527.43	102,201.48	26,325.95	
1934	116,783.11	109,821.15	6,961.96	
1935	107,501.21	88,240.25	19,260.96	(10 mos.)
	<u>\$635,979.22</u>	<u>\$536,258.18</u>	<u>\$99,721.04</u>	

The City of Richmond received as lease rental for the use of its wharfinger facilities the following amounts for the same period:

1930	\$12,706.06
1931	3,039.27
1932	6,564.08
1933	14,396.11
1934	5,194.87
1935 (10 Mos.)	10,892.01
	<u>\$52,792.40</u>

¶fol. 2065] Rental and lease arrangements in effect at Respondent's wharfinger facilities are:

On October 18, 1926, the Respondent's parent company as lessee, entered into a lease with the City of Richmond as lessor whereby the control and management of the Harbor of Richmond, its facilities and adjacent industrial properties became the responsibility of the lessee. Said lease was assigned to the Respondent on May 11, 1928, and provides, among other things, substantially the following terms and conditions, to wit:

*Term:* The term of the lease shall be fifty (50) years from and after the date hereof.

*Filling:* The lessor, at its sole cost and expense, shall fill in all those portions of the demised premises necessary for industrial or other purposes.

*New Construction and Maintenance:* The lessor shall, when and as may be required, construct such additional wharves, piers and other improvements and facilities at its sole cost and expense. Lessor shall further maintain in

good condition and repair all of the wharves, piers and other improvements and facilities, which are now upon, or which may hereafter be constructed or established by it upon the demised premises, at its sole cost and expense.

*Insurance:* The lessor shall, at its sole cost and expense, insure and keep insured, during the term of this lease, any and all improvements owned or controlled by lessor upon, or used in connection with the demised premises, except certain improvements constructed by the lessee.

[fol. 2066] *Use of Premises:* The lessee shall perform its duties as a public wharfinger without preference or discrimination, and permit all parties desiring to use the facilities to do so upon equal terms and conditions.

*Rates and Charges:* The lessee shall have the right to prescribe such rates, charges, rules and regulations in connection with the operation of the public wharfinger facilities as it shall deem proper, and to assess and collect such rates or charges.

*New Construction Upon Lessee's Private Land:* The lessee shall be reimbursed by the lessor for the cost of constructing any building or improvements, which will promote commerce and navigation at the harbor of lessor and built upon that land owned by the lessee adjacent to Parr-Richmond Terminal No. 3 located on the Inner Harbor. The lessor shall reimburse the lessee for the entire cost of all such improvements constructed by the lessee at its expense, including interest thereon at the rate of five per cent (5%) per annum, said reimbursement, however, to be made out of the lessor's share of all monies payable to the lessor under the rental provisions of the lease. (The above provision of the lease applies to the south unit of Parr-Richmond Terminal No. 3, which was constructed by the Respondent; the north unit being built by the City of Richmond).

*Sub-leasing of Demised Premises:* The lessee has the right to sub-let all or any part of the demised premises and collect rent and other charges therefor, subject to the consent of the lessor.

*Taxes:* All taxes upon wharves, piers and other improvements located on the demised premises shall be for the account of the lessor. Taxes paid by lessee upon the land, buildings and improvements owned by it located immediately adjacent to Parr-Richmond Terminal No.

3 (including the south unit of Parr-Richmond Terminal No. 3) in the Inner Harbor shall be refunded or repaid by the lessor to the lessee.

*Channel Dredging and Maintenance:* The lessor shall, during the term of the lease, dredge and maintain the channels and turning basins necessary to accommodate ocean-going vessels, leading from the navigable water of San Francisco Bay to all of the demised premises.

*Rental:* The lessee shall pay the lessor as rental for use and occupation of the demised premises, and as consideration for the lease, one-half of the net income resulting from the management and operation of the same, said net income to be computed as follows, to-wit: All sums received by either lessor or lessee from the operation of the demised premises regardless of the kind or character (including the amount of taxes repaid or refunded by the lessor to lessee as provided elsewhere in the lease), shall be considered to be gross income. (This not only includes revenue derived from public wharfinger operations but also from rentals obtained through sub-leasing of industrial lands to private parties). From the gross income shall be deducted all the actual expenses incurred by the lessee in the management, operation and development of the demised premises and facilities. The difference shall be deemed the net income, one-half of which shall be paid to the lessor as rental and compensation as aforesaid.

*Wharfinger Facilities:* The structures used in the wharfinger business and demised unto the lessee by the lessor [fol. 2068] are known and designated as Parr-Richmond Terminal No. 1 (Outer Harbor) and Parr-Richmond Terminals Nos. 2 and 3 (Inner Harbor).

In connection with the wharfinger facilities mentioned above under lease from the City of Richmond by the Respondent, the latter has sub-let certain public utility wharfinger property consisting of approximately 40,000 square feet of space within the walls of Parr-Richmond Terminal No. 3 (Inner Harbor) to a private industry, namely Filice & Perrelli Canning Company, canner and packer of canned fruits and vegetables. Lease provides for a rental of one and one-half cents ( $1\frac{1}{2}c$ ) per square foot per month for a term of four (4) years and six (6) months. This Commission approved the lease in Decision No. 28142, decided July 31, 1935, in Application No. 20050.

In Application No. 20228, now pending before this Commission, Respondent applies for an order to lease certain public utility wharfing property consisting of approximately 13,000 square feet of space within the walls of Parr-Richmond Terminal No. 4 (Point San Pablo or Western Harbor), a facility owned by Respondent, to a private industry, namely, Richmond Fisheries, Inc., who is engaged in the fish canning and processing business. Proposed lease provides a flat rental of \$225 per month for a term of seven (7) years.

Respondent, under the terms of its lease with the City of Richmond, sub-leases certain land and buildings adjacent to the public utility wharfing properties at the Outer Harbor and the Inner Harbor to private industries. At Point San Pablo the Respondent also leases certain land and buildings owned by it to private industries, which include, among others, a lease between the Respondent and the Philippine Refining Corporation of New York, and a lease between the Respondent and the Pacific Molasses Company, Ltd. Both of these leases cover the rental of certain industrial land immediately adjacent to Parr-Richmond Terminal No. 4 (Point San Pablo) and further purport to give the two aforementioned companies as lessees certain rights and/or privileges in the use of the public wharf without the assessment of any charge for such use.

Respondent purchased the public wharf and lands involved herein from the Richmond Belt Railway as authorized by this Commission in Decision No. 25159, decided September 6, 1932, in Application No. 17529. The two leases referred to above were originally executed between the respective parties and the Richmond Belt Railway on August 15, 1929, and assigned to the Respondent upon the purchase of the wharf and land:

Lease between the Respondent, as lessor, and The Pacific Molasses Company, Ltd., as lessee, provides, among other things, that:

(a) Lessee shall have the right to construct and maintain certain pipe lines on the wharf for the sole purpose of pumping molasses from ships into storage tanks located on the demised land or vice versa and for supplying steam to vessels.

(b) Lessee shall have the right to make such use of the wharf as is necessary and usual for the discharging by said pipe lines of molasses cargoes belonging to the lessee (irre-



spective of the ownership of the vessels discharging such [fol. 2070] cargoes); and without any dockage charge being made by the Respondent, as lessor, either to the lessee or to carrier for the use of said wharf in discharging each cargo.

(c) In case any shipment or movement of the products, property or merchandise of any character owned or handled by the lessee at Point San Pablo during the term of this lease, is made therefrom by means of the said wharf, then the lessee agrees to pay the lessor five cents per ton of 2,000 lbs., on each such shipment and movement so made.

Lease between the Respondent, as lessor, and the Philippine Refining Corporation of New York, as lessee, provides substantially the same terms and conditions as those contained in the lease with The Pacific Molasses Company, Ltd., outlined above except that the commodity to be handled is to consist of vegetable oils, and that toll charges as well as dockage charges shall be waived on all cargoes discharged.

Generally described, Respondent's property consists of four wharves, each equipped with a transit shed, together with spur tracks, storage yard, pipe lines, roadways, equipment and appurtenances necessary to carry on Respondent's business. Parr-Richmond Terminal No. 1 is served only by The Atchison, Topeka and Santa Fe Railway Company; Parr-Richmond Terminals Nos. 2, 3 and 4 are served jointly by The Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Company.

Respondent performs the following wharfinger services as defined in its tariff, to wit: (See Definition of Terms p. 132).

[fol. 2071] (1) *Service and Charges for the Account of the Vessel:*

- (a) Service Charges.
- (b) Dockage Charges.
- (c) Miscellaneous Charges:

- 1. Charge for water supplied to vessels.
- 2. Taking, releasing and shifting lines between dock and the vessel.

(2) *Service and Charges for the Account of the Cargo:*

- (a) Toll Charges.
- (b) Wharf Demurrage Charges.



- (c) Pool Car Assembling Charges.
- (d) Weighing Charges.
- (e) Charge for Taring.
- (f) Charge for Case Labeling.
- (g) Charge for Case Strapping.
- (h) Charge for Stencilling.
- (i) Charge for Scraping and Remarking.
- (j) Charge for Loading or Unloading of Cars or Trucks.
- (k) Charge for Piling and Breaking Down Sugar:

The charge for piling sugar beyond the normal height when placed on wharf demurrage and breaking such piles down for delivery. (Similar to the commonly used "handling charge".)

Rates, charges, rules and regulations covering the wharfinger services are published and filed with this Commission in Parr-Richmond Terminal Corporation, Ltd. Terminal Tariff No. 2, C. R. C. No. 2. Original tariff effective September 1, 1929.

Steamship services available at so-called water "terminal" rates from and to Parr-Richmond Terminals are as follows:

*Intercoastal—Atlantic: (Via Panama Canal)*

Served by all carriers in the trade, both eastbound and westbound. Freight steamers will usually call direct to load or discharge when the cargo amounts to several hundred tons, otherwise exercise their option to barge cargo between the terminal and their San Francisco piers when operating conditions or volume of freight does not warrant the shifting of steamer.

[fol. 2072] Passenger steamers operated by three of the carriers in the trade do not shift from their San Francisco piers and all cargo is barged from or to the San Francisco piers. All carriers absorb cost of barging cargo when performed.

*Intercoastal—Gulf: (Via Panama Canal)*

Served by all carriers in the eastbound trade. Vessels will usually direct to load when cargo offered amounts to several hundred tons, otherwise exercise their option to barge cargo between the Terminal and their San Francisco piers absorbing the cost thereof when operating conditions or volume of freight does not warrant the shifting of

vessel. In the westbound trade, rates apply only when the vessel has an aggregate of 250 tons or more for discharge at Respondent's terminal.

*Coastwise:* (Service between California, Oregon, Washington and British Columbia ports).

Between Respondent's terminal and ports in Oregon and Washington, rates apply only when the vessel will book the cargo in aggregate lots of 150 tons or more for a direct call. In the California intrastate trade, terminal rates apply but cargo is usually barged at the expense of the vessel as the offerings are not sufficient to warrant direct calls.

*European:* (Service between Pacific Coast and Europe via Panama Canal).

Service and rates withdrawn from Respondent's terminal on May 1, 1935, by all of the carriers in the trade.

*Trans-Pacific:*

Served irregularly by direct call of vessels to load or discharge cargo for a minimum ranging from 350 tons to 500 tons per vessel.

*Other Services:*

Served irregularly by direct call of vessels as inducements offer.

[fol. 2074] 5. *State Terminal Company, Limited:*

Respondent, State Terminal Company, Ltd., is a corporation organized in May 1931 and existing under and by virtue of the laws of the State of California. It is engaged, among other things, in the wharfinger business as a public utility as that term is defined in Section 2 of the Public Utilities Act of California. Since 1931 the Respondent has been continuously engaged as a public utility wharfinger.

Property used in the wharfinger operations is located at Third and Channel Streets, San Francisco, California, and is known as State Terminal Facility No. 56.

Respondent operates the facility under a regular monthly assignment from the Board of State Harbor Commissioners of the State of California for which a monthly wharf rental is paid. Such rentals, since June 1, 1931, have amounted to:

June 1, 1931 to January 1, 1932	\$8,167.89
Jan. 1, 1932 to January 1, 1933	9,583.81
Jan. 1, 1933 to January 1, 1934	6,960.00
Jan. 1, 1934 to January 1, 1935	6,960.00

Investment in furniture and fixtures less depreciation amounts to \$762.20, original cost \$1,118.11.

The capital stock of State Terminal Co., Ltd., authorized and issued, consists of three (3) shares of common stock with no par value. Ownership of the stock is as follows:

Mr. H. B. Mills,	
President, State Terminal Co., Ltd.	1 share
Mr. H. F. Miller,	
Vice-President, State Terminal Co., Ltd.,	
President, San Francisco Warehouse Co.	1 Share
Mr. H. S. Young,	
Member of Young, Hudson & Rabinowitz,	
attorneys	1 share
	<hr/>
	3 shares

[fol. 2075] Respondent has no bonds or notes authorized, issued or outstanding.

Revenues and expenses from wharfinger operations since June 1, 1931 (date operations commenced) to October 31, 1935, inclusive, as follows:

Year	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1931 (7 mos.)	\$53,878.70	\$50,365.31	\$3,513.39	
1932	66,164.62	65,877.14	287.48	
1933	51,396.60	51,084.10	312.50	
1934	59,097.17	59,092.86	4.31	
1935 (10 mos.)	58,755.33	56,919.69	1,835.64	
	<hr/>	<hr/>	<hr/>	
	\$289,292.42	\$283,439.10	\$5,953.32	Net operating income 6-1-31 to 10-31-35

The only rent or lease arrangement in effect at the State Terminal Company, Ltd., facility is that between the Respondent and the Board of State Harbor Commissioners of California. This arrangement is the so-called regular monthly assignment of space generally in effect along the San Francisco waterfront for which a monthly wharf rental is paid. The regular assignment, however, does not give assignee the exclusive use of the space and the Board of State Harbor Commissioners may at any time use said space for such other operations as they may deem expedient.

Generally described, Respondent's property consists of the first floor of State Terminal Facility No. 56, located on China Basin at Third and Channel Streets in San Fran-

cisco, together with the necessary equipment and appurtenances to carry on Respondent's business. The second [fol. 2076] floor of State Terminal Facility No. 56 is directly operated by the Board of State Harbor Commissioners as a shipside refrigeration terminal. Rail switching services from and to the property are performed by the State Belt Railroad.

Respondent performs the following wharfinger services as defined in its tariff, to wit: (See Definition of Terms page 132).

*(1) Service and Charges for Account of the Vessel:*

(a) Service Charges.

(b) Charges for Checking for Account of Carriers:

The charge for checking trans-shipment cargo into or out of ocean-going steamers.

(c) Dockage Charges:

This charge is assessed and collected for account of the Board of State Harbor Commissioners.

*(2) Service and Charges for Account of the Cargo:*

(a) Tolls-Wharfage Charges:

This charge is assessed and collected for account of the Board of State Harbor Commissioners.

(b) Wharf Demurrage Charges:

This charge is assessed and collected for account of the Board of State Harbor Commissioners.

(c) Handling In Charges or Handling Out Charges:

The charge for labor and incidental duties in receiving merchandise on Wharf Demurrage or taking delivery from Wharf Demurrage. (Does not include loading to or unloading from cars or trucks).

(d) Charge for Labor Handling Cargo Stopped in Transit:

The charge for labor of handling cargo consigned to specific vessel and ordered held beyond free time period.

(e) Pool Car Assembling Charge.

(f) Weighing Charge.

(g) Charge for Case Labeling.

(h) Charge for Case Strapping.

(i) Charge for Stencilling

(j) Charge for Scraping and Remarking.

(k) Charge for Loading or Unloading of Cars or Trucks.

[fol. 2077] Rates, charges, rules and regulations governing wharfinger services are published and filed with this Commission in State Terminal Company, Ltd., Terminal Tariff No. 1, C. R. C. No. 1. Original tariff effective July 15, 1931.

Respondent acts as a so-called Pier Agent or Terminal Agent for a number of steamer lines operating in the Intercoastal, European and Trans-Pacific trades, whose vessels use the facility as their regularly established berth for the receipt and delivery of cargo. Other vessels in the Intercoastal or European trade not using Respondent's facility as their regular berth but having other piers assigned to them in San Francisco, will accept or deliver cargo under certain conditions at State Terminal by direct call of the vessel or by absorption of the transfer cost from or to their own assigned piers in order to be competitive with regular direct calling vessels.

Generally, application of water terminal rates by other than regular calling lines is restricted to cargo in storage at State Terminal, or in warehouse a part thereof, and to pool cars or portions thereof. Respondent's facility is the only one of its kind in San Francisco accepting such cargo for all carriers in the Intercoastal and European trades and was set up to meet competition of the wharfingers operating in the East Bay.

[fol. 2078] 6. W. C. Marr, M. S. Dodd and Nathan Moran, Copartners Doing Business as San Francisco Terminals:

Respondents, W. C. Marr, M. S. Dodd and Nathan Moran, copartners doing business as San Francisco Terminals, are engaged among other things in the wharfinger business as a public utility as that term is defined in Section 2 of the Public Utilities Act of California since April 29, 1935; and as a public utility car loader or unloader as that term is defined in Section 2 (L) of the Public Utilities Act of California since November 19, 1934.

Property used in the wharfinger operations is located at the foot of Taylor Street on the Embarcadero, San Francisco, California, and is known as Pier 45.

Respondents operate the facility primarily as a shipside storage terminal under an arrangement with the Board of State Harbor Commissioners of the State of California.



No wharf rental or charge of any character is paid to the Board of State Harbor Commissioners for the user thereof in the handling of cargo by the Respondents. The Board of State Harbor Commissioners do assess a charge for office space occupied by the Respondents on the facility. All charges derived from cargo handling are retained by the Respondents except tolls, dockage and wharf demurrage which are prescribed, assessed and collected by the Board of State Harbor Commissioners.

[fol. 2079] Generally described, the property of the Respondents consists of four (4) transit sheds on Pier 45 located at the foot of Taylor Street and the Embarcadero in the City and County of San Francisco, together with the equipment and appurtenances necessary to carry on a wharfing business. Rail switching services from and to the property are performed by the State Belt Railroad.

Respondents perform the following wharfing and/or car loading or unloading services as defined in their tariffs, to wit: (See Definition of Terms, Page 132.)

(1) Service and Charges for Account of the Vessel:

(a) Service Charges:

(b) Charge for Checking for Account of Carriers:

The charge for checking transshipment cargo into or out of ocean-going vessels.

(c) Dockage Charges:

This charge is assessed and collected for the account of the Board of State Harbor Commissioners.

(2) Service and Charges for Account of the Cargo:

(a) Tolls—Wharfage Charges:

This charge is assessed and collected for the account of the Board of State Harbor Commissioners.

(b) Wharf Demurrage Charges:

This charge is assessed and collected for the account of the Board of State Harbor Commissioners.

(c) Charge for Handling Bonded Merchandise on Wharf Demurrage:

The Charge assessed for labor handling bonded merchandise on wharf demurrage under certain conditions.



[fol. 2080] (d) Charge for Weighing:

The charge for weighing merchandise by individual package or by hand truck loads.

(e) Charge for Taring.

(f) Charge for Loading or Unloading of Cars or Trucks.

The following tariffs are filed with this Commission covering the services rendered by the Respondents, to wit:

San Francisco Terminals Car Loading—Car Unloading  
Tariff No. 1, C. R. C. No. 1:

(Original tariff effective November 19, 1934)

Naming Rates, Charges, Rules and Regulations for  
Weighing, Taring and Loading or Unloading of  
Cars or Trucks.

San Francisco Terminals Tariff No. 2, C. R. C. No. 2:

(Original tariff effective April 29, 1935.)

Naming Rates, Charges, Rules and Regulations for  
Tolls, Service, Dockage, Checking, Wharf De-  
murrage and Handling.

Wharfinger facilities of the Respondents are especially adapted to the storage of cargo and this is the primary purpose for which they are used. While none of the vessels operating in the various trade routes use the facilities as their regular established berth for the receipt or delivery of cargo, the services available are frequently utilized when such vessels for one reason or other cannot advantageously use their regular berths.

Pier devoted primarily to storage purposes.

[fol. 2081] 7: El Dorado Terminal Company:

Respondent, El Dorado Terminal Company, is a corporation organized in October of 1930 and existing under and by virtue of the laws of the State of California. It is engaged among other things in the wharfinger business as a public utility as that term is defined in Section 2 of the Public Utilities Act of California and was organized for the primary purpose of handling the waterborne commerce, both inbound and outbound of the parent company, namely, El Dorado Oil Works, manufacturer of coconut oil and byproducts from copra.

Land, buildings and equipment used in the wharfinger operations are owned by the Respondent and located at the

foot of Adeline Street on the Oakland Estuary in the City of Oakland, California.

Investment in land devoted to wharfing purposes, consisting of three acres, is \$250,405.17. This figure includes the cost of dredging berth to accommodate deep water vessels and the filling of land up to grade. The undepreciated and depreciated value as of December 31, 1934, on investments in buildings and equipment is as follows:

Undepreciated value as of 12-31-34	\$120,572.89
Depreciated Value as of 12-31-34	106,883.04

Respondent is authorized to issue 5,000 shares of common stock with a par value of \$100.00 per share, of which 4,000 shares have actually been issued to the parent company, namely, El Dorado Oil Works, for \$400,000.00 in cash.

Differding says this tariff contains a rental charge of 3¢ per sq. ft.

[fol. 2082] Respondent has no bonds authorized, issued or outstanding.

Public utility wharfing operations commenced February 23, 1934. Revenues and expenses from operations for the year 1934 are as follows:

Operating Revenues	\$16,578.19
Operating Expenses	18,234.60
Net Operating Loss	\$1,656.41

Respondent does not have any lease or rental arrangements in effect.

Generally described, Respondent's property consists of an open wharf about 420 feet in length with spur tracks thereon, overhead conveyors for handling of copra and similar cargoes in bulk, two mechanical blowers, tractor, track scale and other equipment and appurtenances necessary to carry on Respondent's business. Goods or merchandise requiring covered storage is provided in adjoining Warehouses owned by the El Dorado Oil Works. Spur tracks on the property connect with The Western Pacific Railroad Company.

Respondent's major business is the handling of cargoes consigned from or to the parent company, namely, El Dorado Oil Works, and it does not solicit other traffic.

Occasionally other traffic is handled when the vessel is loading or discharging at the Respondent's wharf in order to avoid an additional shift of the vessel for the latter's convenience. Such traffic consists of a very small part of the wharfinger operations.

[fol. 2083] Respondent performs the following wharfinger services as defined in its tariff, to wit: (See Definitions of Terms, Page 132.)

- (1) Service and Charges for the Account of the Vessel:
  - (a) Service Charges.
  - (b) Dockage Charges.
- (2) Service and Charges for the Account of the Cargo:
  - (a) Toll Charges.
  - (b) Wharf Demurrage Charges.
  - (c) Charge for Weighing.
  - (d) Charge for Taring.
  - (e) Charge for Strapping—Case.
  - (f) Charge for Stencilling.
  - (g) Charge for Scraping and Remarkings.
  - (h) Loading or Unloading of Cars or Trucks.

In addition to the above-described wharfinger services, Respondent performs the stevedoring of all cargo handled over its facilities.

Rates, charges, rules and regulations covering wharfinger services are published and filed with this Commission in El Dorado Terminal Company Tariff No. 1, C. R. C. No. 1, originally effective February 23, 1934.

Generally, the wharf is served by eastbound vessels in the transpacific trade carrying bulk copra in lots of several hundred tons consigned to the parent company, namely, El Dorado Oil Works. Occasionally vessels in the Pacific Coastwise or intercoastal trade lift minimum lots of cargo at the wharf. No regular service is maintained by any carrier from or to the wharf.

This company performs all wharfinger services, including stevedoring.

[fol. 2084] 8. J. M. Atthowe, an Individual Doing Business as Berkeley Transportation Company:

Respondent, J. M. Atthowe, an individual doing business as Berkeley Transportation Company, is engaged among other things as the lessee of a certain public utility owned

by the City of Berkeley, Alameda County, California, known and designated as the Berkeley Municipal Wharf.

Property used in the public utility wharfing operations is located near the western terminus of University Avenue in the City of Berkeley, California, upon tidelands deeded to the City of Berkeley by the State of California in 1913.

The facility was constructed by the Golden Gate Ferry Company for the City of Berkeley as a consideration for a lease permitting operation of an automobile ferry over tidelands owned by the said City of Berkeley.

On May 31, 1935, the Respondent, as the highest and only bidder for the above-described public utility at public auction for lease, entered into lease with the City of Berkeley upon substantially the following terms and conditions, to wit:

**Term:** The term of the lease shall be three (3) years from and after the date hereof.

**Rent:** The Lessee agrees to pay the sum of One Hundred Dollars (\$100.00) per month each and every month during the term of the lease.

**Use of Premises:** The Lessee agrees to use, maintain, conduct and operate, for and on behalf of the City of Berkeley, *as a public municipal wharf*, the premises leased and to this end permit said wharf to be used, without preference or discrimination, by all persons desiring to use it for the delivery over it of freight to [fol. 2085] and from vessels and to permit its use, without preference or discrimination, by any vessel desiring to use it for the loading or discharging of cargo over it, but such use by shippers or vessels shall be subject to the rules, regulations and charges as prescribed in Ordinance No. 41-N.S. of the City of Berkeley, or as may be prescribed in any other ordinance supplementary thereto or amendatory thereof which may be hereafter adopted by the Council of the City of Berkeley.

That the Lessee may make no rules, regulations or charges governing the use of said wharf in conflict with or differing from those now prescribed in said Ordinance No. 41-N.S. or such other ordinance supplementary thereto or amendatory thereof as may be hereafter adopted by the Council of the City of Berkeley.

That Lessee agrees to perform for and on behalf of the City of Berkeley all the services required of and prescribed for Wharfinger or Chief Wharfinger in said Ordinance No. 41-N.S. or as may be required of or prescribed for Wharfinger or Chief Wharfinger in any other ordinance supplementary thereto or amendatory thereof, which may during the term of this lease be adopted by the Council of the City of Berkeley, and whenever a duty is by said Ordinance imposed upon the Wharfinger or Chief Wharfinger, such duty shall be deemed to be imposed upon the Lessee.

**Revenue and Expense:** The Lessee shall receive and keep for his own use and benefit all moneys derived from docking and tolls received from the operation of said public wharf, and shall pay all costs, expenses, charges, salaries and wages which shall be incurred in connection with the operation of said public wharf, except that the City of Berkeley shall not be relieved of its obligation to pay for the lighting of said public wharf, and the ferry pier adjoining the same.

[fol:2086] **Insurance:**

The Lessee shall provide and pay for insurance against fire in the sum of Ten Thousand Dollars (\$10,000.00) on goods and merchandise stored on said public wharf, or in transit thereon; also, that Lessee shall carry public liability insurance in the sum of \$50,000/\$100,000 and property damage insurance in the sum of \$2,500.

Generally described, Respondent's property consists of a shedded wharf located on the ferry pier of the Southern Pacific Golden Gate Ferries, Ltd., near the western terminus of University Avenue in the City of Berkeley. The facility is not served by any railroad and is on shallow water served only by bay or river watercraft.

Rates, charges, rules and regulations in effect at the wharf are as prescribed in Ordinance No. 41-N.S. (as amended by Ordinances Nos. 61-N. S., 577-N. S. and 1163-N. S.) of the City of Berkeley. Such ordinance provides for Toll Charges, Dockage Charges and Wharfage (the latter

being assessed for storage beyond the free time period permitted.)

Respondent, doing business as Berkeley Transportation Company, conducts common carrier operations by vessel under the provisions of sub-section (d) of Section 50 of the Public Utilities Act upon the inland waters of the State of California and regularly serves the Berkeley Municipal Wharf as a terminal point in its transbay service.

[fol. 2087] 9. South San Francisco Terminal Company.

Respondent, South San Francisco Terminal Company is a corporation organized in March, 1927, and existing under and by virtue of the laws of the State of California. It is engaged in the wharfing business as a public utility as that term is defined in Section 2 of the Public Utilities Act of California. The Respondent has been continuously engaged since 1927 as a public utility wharfing. The record indicates that Respondent was organized by those in control of South San Francisco Land and Improvement Company for the purpose, primarily, of furnishing public terminal facilities in South San Francisco.

Property used by Respondent is located at South San Francisco adjacent to the packing plant of Swift & Company, and consists of an open wharf approximately 140 feet long and 32 feet wide, equipped with pipe line for handling petroleum products and chutes for the handling of live stock. The wharf is located upon land belonging to South San Francisco Land and Improvement Company and is served by shallow-draft bay and river watercraft.

Original investment in structures and betterments is \$6,836.40, against which there has been set up a reserve for accrued depreciation of \$5,000.00.

The capital stock of South San Francisco Terminal Company, authorized and issued, consists of sixty-five shares of common stock at the par value of \$100 per share. (Decision No. 18282, dated April 27, 1927, in Application No. 13624). [fol. 2088] All of the stock of the Respondent is owned by the South San Francisco Land and Improvement Company, a land holding company operating in South San Francisco.

Respondent has no bonds or notes authorized, issued or outstanding.



Revenues and expenses from wharfinger operations from January 1, 1930, to December 31, 1934, inclusive, are as follows:

Year	Operating Revenue	Operating Expense	Net Operating Revenue	Net Operating Loss
1930	\$2,150.61	\$1,985.39	\$165.22	
1931	1,368.02	1,590.96		\$222.94
1932	648.37	1,562.09		913.72
1933	685.45	1,544.53		859.08
1934	733.13	1,739.50		1,006.37
	\$5,585.58	\$8,422.47	\$165.22	\$3,002.11
				165.22
Net operating loss 1-1-30 to 12-31-34				\$2,836.89

Rates, charges, rules and regulations published and filed with this Commission in South San Francisco Terminal Company Local Wharfage Tariff No. 1, C. R. C. No. 1, are for the use of the wharf only and do not include handling of any description. All charges in effect apply against the cargo, viz., Tolls and Wharf Demurrage. Original tariff effective June 1, 1927.

[fol. 2089]. 10. The Paraffine Companies, Inc.:

Respondent, The Paraffine Companies, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California.

As a public utility wharfinger, as that term is defined in Section 2 of the Public Utilities Act of California, Respondent has published and filed a tariff with this Commission. It is engaged, among other things, as a manufacturer of roofing materials, paints and floor coverings with a local plant at Emeryville, California.

Property used in the wharfinger operations is located near the western terminus of Powell Street in the City of Emeryville, California, adjacent to the Bayshore highway now being constructed connecting with the San Francisco-Oakland Bay Bridge and the manufacturing plant of the Respondent.

Investment in land devoted to wharfinger purposes is \$21,038.98 and in buildings the sum of \$39,409.99, with accrued depreciation thereon of \$4,419.49 to June 30, 1935.

Respondent entered into an agreement with the City of Emeryville on April 8, 1929, providing certain terms and conditions in connection with the wharf, substantially as follows, to wit:

(a) That the Respondent shall pay each year during the term of the agreement the sum of \$250.00 for the right of ingress and egress across tideland property owned by the City of Emeryville in order to reach Respondent's property by water.

(b) That the Respondent, upon establishing a public wharfinger operation, shall pay to the City of Emeryville five per cent (5%) of the gross revenue [fols. 2090-2095] derived from all tonnage handled over the wharf. This in addition to the sum named in Paragraph (a).

(c) That the Respondent shall have exclusive control over all rates and charges on tonnage handled over the wharf.

(d) That the term of the agreement shall be for a period of fifty (50) years after the date thereof.

Generally described, Respondent's facilities consist of a shedded wharf on shallow water available only to Bay and river watercraft. It is not served by railroad tracks. Shipments between the wharf and Respondent's manufacturing plant are handled on "jitneys and trailers" on a runway crossing the Bay-shore highway now under construction by means of an underpass. Other shippers and consignees desirous of using the wharf at present would have to utilize the "jitney and trailer" system of delivery to the wharf. The underpass will not accommodate a truck. It appears that up to the present the wharf has only been used in the handling of shipments from or to Respondent's own manufacturing plant.

Respondent filed its Tariff No. 1, C. R. C. No. 1 with this Commission on May 29, 1935, effective June 3, 1935, naming a toll charge of 15¢ per ton upon all cargo conveyed on, over, or through the facility designated as the Emeryville Wharf. The tariff names no other rate or charge nor does it provide for any rules or regulations in connection with cargo handled.

[fol. 2096]

## Table No. I

## Trend on Terminal Tonnage During Depression Years

(Based on Tonnage Handled by the Encinal and Howard  
Terminals. 1930 Tonnage = 100)

Year	Index
1930	100
1931	92
1932	88
1933	104
1934	102
1935 (10 Mos.)	108

Tonnage values for the Parr-Richmond Terminal were not included as necessary steamship services were not obtained by this facility until about 1932. Furthermore, this port has enjoyed a very heavy increase in its movement of liquids in bulk since 1932. The State Terminal Co., Ltd., and the San Francisco Terminals did not commence operation until June, 1931, and April, 1935, respectively. For these reasons their tonnages were omitted to avoid distortion of the above index.

[fol. 2097] *Explanation of Tables II to XIV Inclusive*

*Comparison of the Several Charges Assessed at San Francisco, Bay Ports and Stockton:*

There follows herewith tables drawn up for the purpose of facilitating comparison: first, between different ports and terminals; and secondly, between charges assessed the various trades and cargoes at the same terminal. The tables provide such a comparison of service charges, dockage, toll, car loading, car unloading, wharf demurrage and warehouse storage charges. They have been used to develop and substantiate the general analysis appearing in this report and are added here to complete the record and to serve for future reference.

[vol. 2098]

Table Number II.

## Comparison of Service Charges in Effect at San Francisco Bay Ports and Stockton

Terminal	Coastwise								Inland Waterway				
	Inbound				Outbound				Inbound		Outbound		
	Cargo N. O. S. Carloads	Cargo N. O. S. L. C. L.	Cargo N. O. S. Direct to Open Car or Barge	Flour and Feed	Cargo N. O. S. Carloads	Cargo N. O. S. L. C. L.	Auto- mobiles, Each	Flour and Feed	Cargo N. O. S.	Onions and Potatoes	Trans- shipped Cargo to Ocean Vessels	Cargo N. O. S.	Trans- shipped Cargo ex Ocean Vessels
Emeryville Terminals	35	50	27½	30	30	40	100	30	25	30	Free	25	Free
Howard Terminal	35	50	27½	30	30	40	100	30	25	30	Free	25	Free
Parr-Richmond Terminal Corp.	30	40	27½	30	30	40	100	30	25	30	Free	25	Free
State Terminal Company, Ltd.	35	50	27½	30	30	40	100	30	—	—	—	—	—
San Francisco Terminals	35	40	27½	30	30	40	100	30	—	—	—	—	—
The Paraffine Companies, Inc. (Emeryville Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—
So. San Francisco Terminal Co.	—	—	—	—	—	—	—	—	—	—	—	—	—
Berkeley Transportation Company (Berkeley Municipal Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—
El Dorado Terminal Company	35	50	27½	30	30	40	—	30	25	30	Free	25	Free
State of California (Board of Harbor Commissioners)—S. F.	—	—	—	—	—	—	—	—	—	—	—	—	—
Port of Oakland	35	50	27½	30	30	40	100	30	25	30	Free	25	Free
Port of Stockton	10 <sup>1</sup>	10 <sup>2</sup>	5 <sup>2</sup>	20 <sup>2,3</sup>	10 <sup>2</sup>	10 <sup>2</sup>	—	20 <sup>2,3</sup>	—	—	—	—	—

<sup>1</sup> Charge is termed "receiving and delivery charge" for checking cargo from or to vessel.<sup>2</sup> Applies on flour only.

[Vol. 2099]

Table Number II.

Comparison of Service Charges in Effect at San Francisco Bay Ports and Stockton  
(Continued)

Terminal	Intercoastal								Foreign							
	Inbound				Outbound				Inbound				Outbound			
	Cargo N. O. S. In Bulk	Cargo N. O. S. Direct	Cargo N. O. S. Other Than Above	Tin Plate	Cargo N. O. S.	Copper Slabs Direct	Lumber Per M.F.B.M.	Oil In Bulk Direct	Cargo N. O. S. In Bulk	Cargo N. O. S. Direct	Cargo N. O. S. Other Than Above	Fer- tilizers	Cargo N. O. S.	Barley	Copra, In Bags	Meal, Fish, In Bags
Encinal Terminals.....	10	27½	50	35	40	27½	37½	10	10	25	50	25	40	25	25	25
Howard Terminal.....	10	27½	50	35	40	27½	37½	10	10	25	50	25	40	25	25	25
Parr-Richmond Terminal Corp.....	10	27½	40	35	40	27½	37½	10	10	25	40	25	40	25	25	25
State Terminal Company, Ltd.....	10	27½	50	35	40	27½	37½	15	10	25	50	25	40	25	25	25
San Francisco Terminals.....	10	27½	40	35	40	27½	37½	10	10	25	50	25	40	25	25	25
The Paraffine Companies, Inc. (Emeryville Wharf).....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
So. San Francisco Terminal Co.....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Berkeley Transportation Company (Berkeley Municipal Wharf).....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
El Dorado Terminal Company.....	10	—	50	35	40	27½	37½	10	10	25	50	25	40	25	25	25
State of California (Board of Harbor Com- missioners)—S. F.....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Port of Oakland.....	10	27½	50	35	40	27½	37½	10	10	25	50	25	40	25	25	25
Port of Stockton.....	—	5 <sup>1</sup>	20 <sup>2</sup>	20 <sup>2</sup>	20 <sup>2</sup>	5 <sup>2</sup>	—	—	—	5 <sup>2</sup>	2 <sup>2</sup>	20 <sup>1</sup>	20 <sup>2</sup>	20 <sup>2</sup>	20 <sup>2</sup>	20 <sup>1</sup>

<sup>1</sup> Charge is termed "receiving and delivery charge" for checking cargo from or to vessel.  
Amounts are cents per 2000 pounds.



Table Number III.

Comparison of Service Charges in Effect at San Francisco Bay Ports and Stockton  
(Continued)

Terminal	Hawaiian				Transpacific											Petroleum Products, In Packages, Direct
	Inbound		Outbound		Inbound					Outbound						
	All Cargo	Cargo N. O. S.	Oil In Bulk Direct	Cargo N. O. S. In Bulk	Cargo N. O. S. Direct	Cargo N. O. S. Other Than Above	Meals & Meal Cake	Seed	Sugar	Cargo N. O. S. Direct	Cargo N. O. S.	Lumber Per M.F.B.M.	Oil In Bulk Direct	Petroleum Products, In Packages		
Encinal Terminals	40	40	15	15	35	50	32½	32½	32½	30	50	50	15	30	30	
Howard Terminal	40	40	15	15	35	50	32½	32½	32½	30	50	50	15	30	30	
Parr-Richmond Terminal Corp.	40	40	15	15	35	50	32½	32½	32½	30	50	30	10	Free	Free	
State Terminal Company, Ltd.	40	40	40	25**	35**	35**	25**	25**	25**	30	50**	50	15	25	20	
San Francisco Terminals	40	40	40	25	35	35	25	25	25	25	35	50	15	25	20	
The Paraffine Companies, Inc. (Emeryville Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
So. San Francisco Terminal Co.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Berkeley Transportation Company (Berkeley Municipal Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
El Dorado Terminal Company	35	35	—	15	35	50	32½	30	32½	30	50	50	15	30	30	
State of California (Board of Harbor Commissioners)—S. F.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Port of Oakland	40	40	15	15	35	50	32½	32½	32½	30	50	50	15	30	30	
Port of Stockton	20 <sup>1</sup>	20 <sup>2</sup>	—	—	5 <sup>1</sup>	20 <sup>2</sup>	20 <sup>2</sup>	20 <sup>2</sup>	20 <sup>2</sup>	20 <sup>2</sup>	20 <sup>2</sup>	—	—	20 <sup>2</sup>	5 <sup>2</sup>	

\*\* Means weight or measurement as per ship's manifest.

<sup>1</sup> Charge is termed "receiving and delivery charge" for checking cargo from or to vessel.



Table Number IV

Comparison of Dockage Charges and Tolls in Effect at San Francisco Bay Ports and Stockton

ol. 2101]

Terminal	Dockage Charges								Tolls							
	Coastwise and Inland Waterways <sup>1</sup>				Off Shore <sup>2</sup>				Coastwise and Inland Waterways				Off Shore			
	Load- ing Cargo	Dis- charg- ing Cargo	Lying Idle With No Cargo Aboard	Lying Idle With Cargo On Board	Load- ing Cargo	Dis- charg- ing Cargo	Lying Idle With No Cargo Aboard	Lying Idle With Cargo On Board	Mer- chandise, N. O. S. Including Supplies and Stores	Auto- mobiles, Each	Ballast, etc., Direct	Live- stock, Cattle, Per Head	Mer- chandise, N. O. S. Including Supplies and Stores	Auto- mobiles, Each	Ballast, etc., Direct	Live- stock, Cattle, Per Head
Principal Terminals.....	1/2 <sup>1</sup>	F <sup>1</sup>	1/2	F	Free	Free	1/2	1/2	5	10	5	1	15	**	10	3
Howard Terminal.....	1/2 <sup>1</sup>	F <sup>1</sup>	1/2	F	Free	Free	1/2	1/2	5	10	5	1	15	**	10	3
Mar-Richmond Terminal Corp.....	1/2 <sup>1</sup>	F <sup>1</sup>	1/2	F	Free	Free	1/2	1/2	5	10	5	5	15	**	10	15
State Terminal Company, Ltd.....	F <sup>1</sup>	F	1/2	F	1/2	1/2	1/2	1/2	5	10	5	5	15	25	10	15
San Francisco Terminals.....	1/2 <sup>1</sup>	F <sup>1</sup>	1/2	F	1/2	1/2	1/2	1/2	5	10	5	5	15	25	10	15
The Paraffine Companies, Inc. (Emeryville Wharf).....	—	—	—	—	—	—	—	—	15	—	—	—	15	—	—	—
San Francisco Terminal Co.....	—	—	—	—	—	—	—	—	5	—	—	5	5	—	—	5
Berkeley Transportation Company (Berkeley Municipal Wharf).....	1/2 <sup>1</sup>	F <sup>1</sup>	1/2	F	Free	Free	1/2	1/2	5	—	5	5	5	—	5	5
Dorado Terminal Company.....	1/2 <sup>1</sup>	F <sup>1</sup>	1/2	F	Free	Free	1/2	1/2	5	10	5	1	15	**	10	3
State of California (Board of Harbor Commissioners)—S. F.....	1/2 <sup>1</sup>	F <sup>1</sup>	1/2	F	1/2	1/2	1/2	1/2	5	10	5	5	15	25	10	15
Port of Oakland.....	1/2 <sup>1</sup>	F <sup>1</sup>	1/2	F	Free	Free	1/2	1/2	5	10	5	1	15	**	10	3
Port of Stockton.....	1/2	1/2	1/2	1/2	1/2	1/2	1/2	1/2	5	10	5	5	15	25	10	15

<sup>1</sup> When "service charges" are paid by Coastwise vessels, the dockage charges shall not exceed a maximum of ten cents (10¢) per ton based on cargo loaded or discharged at the terminal.<sup>2</sup> Applies when vessel does not load more cargo than one-fifth (1/5) the N. R. T. of such vessel.<sup>3</sup> Applies when vessel loads cargo in excess of one-fifth (1/5) the N. R. T. of the vessel.<sup>4</sup> Rates shown as "1/2" indicate half dockage rate of 1¢ per ton per day of 24 hours for the first 200 net registered tonnage measurement of the vessel, and 3/8¢ for each additional ton.<sup>5</sup> Rates shown as "F" indicate full dockage rate of 2¢ per ton per day of 24 hours for the first 200 net registered tonnage measurement of the vessel, and 3/4¢ for each additional ton, except Berkeley Municipal Wharf which is 2¢ for the first 200 N. R. T. and 1/2¢ for each additional ton.<sup>6</sup> Means weight or measurement as per ship's manifest.

Table Number V.

Comparison of Car Loading Charges in Effect at San Francisco Bay Ports and Stockton

[Vol. 2102]

Terminal	Car Loading															
	Hawaiian				Coastwise				All Others							
	Mer- chan- dise, N.O.S.	Wall- board, Cane Fibre	Pine- apple, Des- tined Rail to Eastern Points	Pine- apple, Des- tined Locally	Mer- chan- dise, N.O.S.	Canned Goods	Grain N.O.S.	Paper and Paper Articles N.O.S.	Mer- chan- dise, N.O.S.	Canned Goods N.O.S.	Canned Goods, Des- tined Rail to Eastern Points	Fertil- izers in Pack- ages	Hard- ware, N.O.S.	Pipe, N.O.S.	Paper Articles N.O.S.	Iron or Steel, N.O.S.
Encinal Terminals	40	95	50	40	52	45	30	35	50	40	50	35	45	70	45	45
Howard Terminal	40	95	50	40	52	45	30	35	50	40	50	35	45	70	45	45
Parr-Richmond Terminal Corp.	50	50	50	40	50	40	50	45	50	40	50	35	45	70	45	45
State Terminal Company, Ltd.	50	50	50	40	50	40	35	45	50	40	50	35	45	70	45	45
San Francisco Terminals	50	50	40	40	52	40	30	35	50	40	40	35	45	70	45	45
The Paraffine Companies, Inc. (Emeryville Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
So. San Francisco Terminal Co.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Berkeley Transportation Company (Berkeley Municipal Wharf)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
El Dorado Terminal Company	50	50	40	40	50	40	50	45	50	40	40	35	45	70	45	45
State of California (Board of Harbor Commis- sioners)—S. F.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Port of Oakland	40	40	50	40	52	45	30	35	50	40	50	35	45	70	45	45
Port of Stockton (See Note)	50 <sup>a</sup> 40 <sup>b</sup>	40	40	40	50 <sup>a</sup> 40 <sup>b</sup>	40	45	50 <sup>a</sup> 40 <sup>b</sup>	50 <sup>a</sup> 40 <sup>b</sup>	40	40	40	50 <sup>a</sup> 40 <sup>b</sup>	50 <sup>a</sup> 40 <sup>b</sup>	50 <sup>a</sup> 40 <sup>b</sup>	50 <sup>a</sup> 40 <sup>b</sup>

Note: Rates as published by Sierra Stevedoring Company and Stockton Terminal and Stevedoring Company.

<sup>a</sup> Rate per 2,000 lbs. when not exceeding 120 cu. ft. per 2,000 lbs.<sup>b</sup> Rate per 40 cu. ft. when exceeding 120 cu. ft. per 2,000 lbs.

Table Number VI

## Comparison of Car Unloading Charges in Effect at San Francisco Bay Ports and Stockton

Terminal	Car Unloading										
	Hawaiian			All Others							
	Merchan- dise, N.O.S.	Lumber, Per M.F.B.M.	Brick, Loose, Per M.	Merchan- dise, N.O.S.	Canned Goods	Dried Fruit	Lumber, Per M.F.B.M.	Petroleum Products in Packages	Paper and Paper Articles, N.O.S.	Sugar, Direct to Ship	Sugar
Encinal Terminals	40.	135	150	50	40	40	100	40	40	20	30
Howard Terminal	40	70	150	50	40	40	100	40	40	20	30
Parr-Richmond Terminal Corporation	50	100	—	50	40	40	100	40	40	20	30
State Terminal Company, Ltd.	50	100	—	50	40	40	100	40	40	20	30
San Francisco Terminals	50	100	—	50	40	40	100	40	40	20	30
The Paraffine Companies, Inc. (Emeryville Wharf)	—	—	—	—	—	—	—	—	—	—	—
South San Francisco Terminal Company	—	—	—	—	—	—	—	—	—	—	—
Berkeley Transportation Company (Berkeley Municipal Wharf)	—	—	—	—	—	—	—	—	—	—	—
El Dorado Terminal Company	50	100	—	50	40	40	100	40	40	20	30
State of California (Board of Harbor Commissioners)—San Francisco	—	—	—	—	—	—	—	—	—	—	—
Port of Oakland	40	70	150	50	40	40	100	40	40	20	30
Port of Stockton (See Note)	50 <sup>a</sup>	80	65	50 <sup>a</sup>	30	30	80	40	50 <sup>a</sup>	20	30
	( 40 <sup>a</sup>		(Flat Cars) 95	40 <sup>a</sup>					40 <sup>a</sup>		
	(		(Box Cars)								

Note: Rates as published by Sierra Stevedoring Company and Stockton Terminal and Stevedoring Company.

<sup>a</sup> Rate per 2,000 lbs. when not exceeding 120 cu. ft. per 2,000 lbs.<sup>b</sup> Rate per 40 cu. ft. when exceeding 120 cu. ft. per 2,000 lbs.

Table Number VII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents per Ton of 2,000 Pounds

Commodity and Terminals	Number of Days																	
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180
Ammonia, Sulphate of, In Bags:																		
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond..	61¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225
State Terminals & S. F. Terminals	7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½
S. F. Bay Warehouses (Handling Charge—70 cents)	115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340
Port of Stockton	61¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225
Canned Goods, N.O.S., in Cases:																		
Port of Oakland, El Dorado, Encinal, Howard & Parr-Richmond.	61¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	123	150	162½	187½	225	250	275	300	337½
S. F. Bay Warehouses (Handling Charge—90 cents)	138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378
Encinal Terminal Warehouses (Handling Charge—90 cents)	138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378
Howard Terminal Warehouses (Handling Charge—90 cents)	138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378
Port of Stockton	61¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225



Table Number VH

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents per Ton of 2,000 Pounds

Number of Days																											
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
61½	121½	181½	25	31½	37½	50	62½	75	87½	100	112½	131½	150	168½	187½	206½	225	250	275	300	325	350	375	393½	412½	431½	450
7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140	140	170	170	200	200	230	230	260	260	290
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340	385	430	430	475	520	520	565	565	610	610
61½	121½	181½	25	31½	37½	50	62½	75	87½	100	112½	131½	150	168½	187½	206½	225	250	275	300	325	350	375	393½	412½	431½	450
61½	121½	181½	25	31½	37½	50	62½	75	87½	100	112½	131½	150	168½	187½	206½	225	250	275	300	325	350	375	393½	412½	431½	450
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	123	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378	426	474	474	522	522	570	618	618	666	666
138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378	426	474	474	522	522	570	618	618	666	666
138	138	138	138	138	138	186	186	186	234	234	234	282	282	330	330	378	378	426	474	474	522	522	570	618	618	666	666
61½	121½	181½	25	31½	37½	50	62½	75	87½	100	112½	131½	150	168½	187½	206½	225	250	275	300	325	350	375	393½	412½	431½	450

Table Number VIII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents Per Ton of 2,000 Pounds

Commodity and Terminals	Number of Days																			
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220
Cement, Building, In Sacks:																				
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge—70 cents)	105	105	105	105	105	105	140	140	140	175	175	175	210	210	245	245	280	280	315	350
Howard Terminal Warehouses (Handling Charge—70 cents)	100	100	100	100	100	100	130	130	130	160	160	160	190	190	220	220	250	250	280	310
Encinal Terminal Warehouses (Handling Charge—70 cents)	100	100	100	100	100	100	130	130	130	160	160	160	190	190	220	220	250	250	280	310
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440



Table Number VIII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents Per Ton of 2,000 Pounds

Number of Days																											
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
105	105	105	105	105	105	140	140	140	175	175	175	210	210	245	245	280	280	315	350	350	385	420	420	455	455	490	490
100	100	100	100	100	100	130	130	130	160	160	160	190	190	220	220	250	250	280	310	310	340	370	370	400	400	430	430
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720

Table Number IX.  
Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents per Ton of 2,000 Pounds

Commodity & Terminals	Number of Days																			
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220
Merchandise, N. O. S. in Pkg.:																				
Port of Oakland, El Dorado Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge 70 cents—Rates based on 40 cu. ft. per 2000 lbs.)	115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340	385	430
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
Milk Condensed, in Bbls.:																				
Port of Oakland, El Dorado Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses, Encinal Terminal Warehouses (Handling Charge—87 cents)	124	124	124	124	124	124	161	161	161	198	198	198	235	235	272	272	309	309	346	383
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440

Table Number IX.

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents per Ton of 2,000 Pounds

Number of Days																											
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340	385	430	430	475	520	520	565	565	610	610
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
124	124	124	124	124	124	161	161	161	198	198	198	235	235	272	272	309	309	346	383	383	420	457	457	494	494	531	531
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	620	660	690	720

Table Number X.

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents Per Ton of 2,000 Pounds

Commodity and Terminals	Number of Days																			
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220
Milk, Dry Powdered, in Bbls.:																				
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond.	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge—116 cents)	182	182	182	182	182	182	248	248	248	314	314	314	380	380	446	446	512	512	578	644
Port of Stockton	6¼	12½	18¼	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¼	187½	206¼	225	250	275
Nitrates, Potash & Soda Ash, in Pkgs.:																				
Port of Oakland, El Dorado Encinal, Howard, Parr-Richmond.	2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110
State Terminal & S. F. Terminals	7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140	140	170
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge—70 cents)	115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340	385	430
Port of Stockton	2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110



Table Number X.

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
 Rates in Cents Per Ton of 2,000 Pounds

Number of Days																											
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
182	182	182	182	182	182	248	248	248	314	314	314	380	380	446	446	512	512	578	644	644	710	776	776	842	842	908	908
6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250	275	300	325	350	375	393¾	412½	431¼	450
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	165	172½	180
7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140	140	170	170	200	200	230	230	260	260	290
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3475	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
115	115	115	115	115	115	160	160	160	205	205	205	250	250	295	295	340	340	385	430	430	475	520	520	565	565	610	610
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	165	172½	180

Table Number XI

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents per Ton of 2,000 Pounds

Commodity and Terminals	Number of Days																			
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220
<b>Paper, Toilet, In Cases:</b>																				
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge—300 cents)	500	500	500	500	500	500	700	700	700	900	900	900	1100	1100	1300	1300	1500	1500	1700	1900
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
<b>Peat Moss, In Bales:</b>																				
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400
S. F. Bay Warehouses (Handling Charge—239 cents)	438	438	438	438	438	438	637	637	637	836	836	836	1035	1035	1234	1234	1433	1433	1632	1831
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440



Table Number XI

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents per Ton of 2,000 Pounds

Number of Days																											
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
500	500	500	500	500	500	700	700	700	900	900	900	1100	1100	1300	1300	1500	1500	1700	1900	1900	2100	2300	2300	2500	2500	2700	2700
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	660
438	438	438	438	438	438	637	637	637	836	836	836	1035	1035	1234	1234	1433	1433	1632	1831	1831	2030	2229	2229	2428	2428	2627	2627
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720

Table Number XII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents per Ton of 2,000 Pounds

Commodity and Terminals	Number of Days																	
	5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180
<b>Fertilizer, N.O.S., In Bags:</b>																		
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360
State Terminal & S. F. Terminals	7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½
S. F. Bay Warehouses (Handling Charge—85 Cents)	130	130	130	130	130	130	175	175	175	220	220	220	265	265	310	310	355	355
Port of Stockton	10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360
<b>Grain, N. O. S., In Bags:</b>																		
Port of Oakland, El Dorado, Encinal, Howard, Parr-Richmond	3¾	7½	11¼	15	18¾	22½	30	37½	45	52½	60	67½	78¾	90	101¼	112½	123¾	135
State Terminal & S. F. Terminals	15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190
Isais Creek Grain Terminal Corporation	15	15	40	40	40	40	40	65	65	65	70	70	75	75	80	80	85	85
S. F. Piers—Penalty Wharf Demurrage	25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775
S. F. Piers—Bulkhead Demurrage	12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½
S. F. Bay Warehouses (Handling Charge—50 Cents)	80	80	80	80	80	80	110	110	110	140	140	140	170	170	200	200	230	230
Port of Stockton	3¾	7½	11¼	15	18¾	22½	30	37½	45	52½	60	67½	78¾	90	101¼	112½	123¾	135

Table Number XII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents per Ton of 2,000 Pounds

Number of Days																											
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
7½	7½	7½	7½	20	20	20	20	35	35	35	50	50	80	80	110	110	140	140	170	170	200	200	230	230	260	260	290
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
130	130	130	130	130	130	175	175	175	220	220	220	265	265	310	310	355	355	400	445	445	490	535	535	580	580	625	625
10	20	30	40	50	60	80	100	120	140	160	180	210	240	270	300	330	360	400	440	480	520	560	600	630	660	690	720
3¾	7½	11¼	15	18¾	22½	30	37½	45	52½	60	67½	78¾	90	101¼	112½	123¾	135	150	165	180	195	210	225	236¼	247½	258¾	270
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340
15	15	40	40	40	40	40	65	65	65	70	70	75	75	80	80	85	85	90	90	95	100	100	105	110	110	115	115
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2275	2575	2775	2975	3125	3275	3425	3575
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650
80	80	80	80	80	80	110	110	110	140	140	140	170	170	200	200	230	230	260	290	290	320	350	350	380	380	410	410
3¾	7½	11¼	15	18¾	22½	30	37½	45	52½	60	67½	78¾	90	101¼	112½	123¾	135	150	165	180	195	210	225	236¼	247½	258¾	270

Table Number XIII  
Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents per Ton of 2,000 Pounds

Commodity and Terminals	5	10	15	20	25	30	40	50	60	70	80	90	Number of Days								105	120	135	150	165	180	200																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																
Meal, Copra, In Bags:																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											</



Table Number XIII

Comparison of Wharf Demurrage Charges and Warehouse Storage Charges After Expiration of Free Time Period  
Rates in Cents per Ton of 2,000 Pounds

Number of Days																												
5	10	15	20	25	30	40	50	60	70	80	90	105	120	135	150	165	180	200	220	240	260	280	300	315	330	345	360	
6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250	275	300	325	350	375	393¾	412½	431¼	450	
15	15	15	15	40	40	40	40	70	70	70	100	100	130	130	160	160	190	190	220	220	250	250	280	280	310	310	340	
25	75	125	175	225	275	375	475	575	675	775	875	1025	1175	1325	1475	1625	1775	1975	2175	2375	2575	2775	2975	3125	3275	3425	3575	
12½	25	37½	37½	50	62½	75	100	112½	125	150	162½	187½	225	250	275	300	337½	362½	400	437½	475	500	537½	562½	600	625	650	
105	105	105	105	105	105	140	140	140	175	175	175	210	210	245	245	280	280	315	350	350	383	420	420	455	455	490	490	
165	165	165	165	165	165	165	165	165	165	165	165	165	165	180	180	195	195	210	225	225	225	240	255	270	270	285	285	
6¼	12½	18¾	25	31¼	37½	50	62½	75	87½	100	112½	131¼	150	168¾	187½	206¼	225	250	275	300	325	350	375	393¾	412½	431¼	450	
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	165	172½	180	
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	165	172½	180	
75	75	75	75	75	75	100	100	100	125	125	125	150	150	175	175	200	200	225	250	250	275	300	300	325	325	350	350	
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	165	172½	180	
45	45	45	45	45	45	60	60	60	75	75	75	90	90	105	105	120	120	135	150	150	165	180	180	195	195	210	210	
32½	35	37½	40	42½	45	50	55	60	65	70	75	82½	90	97½	105	112½	120	130	140	150	160	170	180	187½	195	202½	210	
2½	5	7½	10	12½	15	20	25	30	35	40	45	52½	60	67½	75	82½	90	100	110	120	130	140	150	157½	163	172½	180	

[Vol. 2111]

Table Number XIV

Free Time Allowed Before Assessment of Wharf Demurrage or Storage Charges (Exclusive of Sundays and holidays except as noted)				Time Basis of Wharf Demurrage Charges (Including Sundays and holidays except as noted)
Wharfinger	Coastwise	Intercoastal	Foreign or Offshore	
El Dorado Terminal	10 Days	10 Days	10 Days	Per Day
Emery Terminal	10 Days	10 Days	10 Days	Per Day, except Coke and Sand, in bulk
Howard Terminal	10 Days	10 Days	10 Days	Per Day, except Coke and Sand, in bulk
Parr-Richmond Terminal	10 Days	10 Days	10 Days	Per Day
Port of Oakland	10 Days	10 Days	10 Days	Per Day
San Francisco Terminals	10 Days	10 Days	10 Days	( 20 Days or fraction thereof, next
State Terminal				( 30 Days or fraction thereof, each succeeding
Port of Stockton	10 Cal. Days	10 Cal. Days	10 Cal. Days	( 30 Days or fraction thereof
San Francisco Piers—Inbound	5 Days	5 Days	7 Days	Per Day
San Francisco Piers—Inbound	10 Days (In-transit Cargo)	10 Days (In-transit Cargo)	10 Days (In-transit Cargo)	( Penalty Basis—5 Day period or fraction thereof
San Francisco Piers—Outbound	5 Days	10 Days	10 Days	( Bulkhead Basis—7 Day periods or fraction thereof
Island Creek Grain Terminal (Handles Grain Only)	20 Days	20 Days	20 Days	( 10 Days or fraction thereof, next
				( 30 Days or fraction thereof, each succeeding
				( 30 Days or fraction thereof
South San Francisco Terminal	3 Days	3 Days	3 Days	Per Day
				( 2 Days or fraction thereof, next
M. Atthowe (Berkeley Municipal Wharf)	3 Days	3 Days	3 Days	( 2 Days or fraction thereof, next
				( 2 Days or fraction thereof, next
				( 2 Days or fraction thereof, next
				( 22 Days or fraction thereof, each succeeding
				( 30 Days or fraction thereof

Note: Cal. Days means "Calendar days."

In-transit Cargo means "cargo routed through the port and billed to inland destination."



Table Number XIV

Wharf Demurrage or Storage Charges holidays except as noted)		Time Basis of Wharf Demurrage Charges (Including Sundays and holidays except as noted)	Wharf Demurrage Rate on Cargo, N.O.S.
Intercoastal	Foreign or Offshore		
10 Days	10 Days	Per Day	Rate on Cargo, N.O.S. 2 cents per 2000 lbs. per day
10 Days	10 Days	Per Day, except Coke and Sand, in bulk	Rate on Cargo, N.O.S. 2 cents per 2000 lbs. per day
10 Days	10 Days	Per Day, except Coke and Sand, in bulk	Rate on Cargo, N.O.S. 2 cents per 2000 lbs. per day
10 Days	10 Days	Per Day	Rate on Cargo, N.O.S. 2 cents per 2000 lbs. per day
10 Days	10 Days	Per Day	Rate on Cargo, N.O.S. 2 cents per 2000 lbs. per day
10 Days	10 Days	( 20 Days or fraction thereof, next	( 15 cents per 2000 lbs. for 1st 20 days or fraction thereof
10 Days	10 Days	( 30 Days or fraction thereof, each succeeding	( 25 cents per 2000 lbs. for next 30 days or fraction thereof
10 Days	10 Days	( 30 Days or fraction thereof	( 30 cents per 2000 lbs. for each 30 days or fraction thereafter
10 Cal. Days	10 Cal. Days	Per Day	Rate on Cargo, N.O.S. 2 cents per 2000 lbs. per day
5 Days	7 Days	( Penalty Basis—5 Day period or fraction thereof	( Penalty Basis—25 cents per 2000 lbs. for first 5 days or fraction thereof, then
10 Days (In-transit Cargo)	10 Days (In-transit Cargo)	( Bulkhead Basis—7 Day periods or fraction thereof	( 50 cents per 2000 lbs. for each 5 days or fraction thereafter
10 Days	10 Days	( 10 Days or fraction thereof, next	( Bulkhead Basis—12½ cents per 2000 lbs. for each 7 days or fraction thereof
20 Days	20 Days	( 30 Days or fraction thereof, each succeeding	( 45 cents per 2000 lbs. for first 10 days or
		( 30 Days or fraction thereof	( fraction thereof
			( 25 cents per 2000 lbs. for next 30 days or fraction
			( thereof
			( 25 cents per 2000 lbs. for next 30 days or fraction
			( thereof
			( 5 cents per 2000 lbs. for each 30 days or fraction
			( thereafter but not to extend beyond one year after
			( arrival
3 Days	3 Days	Per Day	Rate on Cargo, N.O.S. 2½ cents per 2000 lbs. per day
		( 2 Days or fraction thereof, next	( 5 cents per 2000 lbs. for first 2 days or fraction
		( 2 Days or fraction thereof, next	( thereof
		( 2 Days or fraction thereof, next	( 5 cents per 2000 lbs. for next 2 days or fraction
		( 2 Days or fraction thereof, next	( thereof
		( 2 Days or fraction thereof, next	( 5 cents per 2000 lbs. for next 2 days or fraction
		( 2 Days or fraction thereof, next	( thereof
		( 22 Days or fraction thereof, each succeeding	( 5 cents per 2000 lbs. for next 22 days or fraction
		( 30 Days or fraction thereof	( thereof
			( 25 cents per 2000 lbs. for each 30 days or fraction
			( thereafter

rt and billed to inland destination."

